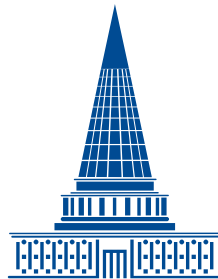


DRŽAVNI SVET –
že 25 let stičišče interesov družbe

THE NATIONAL COUNCIL –
Interconnecting Society for 25 Years





DRŽAVNI SVET –
že 25 let stičišče interesov družbe

THE NATIONAL COUNCIL –
Interconnecting Society for 25 Years



REPUBLIKA SLOVENIJA
DRŽAVNI SVET

VSEBINA

UVODNA BESEDILA

- 7 MITJA BERVAR,
*mag. manag., predsednik Državnega sveta
Republike Slovenije v petem mandatu*
- 13 BORUT PAHOR,
predsednik Republike Slovenije
- 15 DR. MILAN BRGLEZ,
predsednik Državnega zbora
- 19 DR. MIRO CERAR,
predsednik vlade Republike Slovenije
- 23 DR. IVAN KRISTAN,
predsednik Državnega sveta v prvem mandatu
- 27 TONE HROVAT,
predsednik Državnega sveta v drugem mandatu
- 33 JANEZ SUŠNIK,
predsednik Državnega sveta v tretjem mandatu
- 37 MAG. BLAŽ KAVČIČ,
predsednik Državnega sveta v četrtem mandatu
- 41 MARJAN MAUČEC,
*mag. posl. ved, sekretar Državnega sveta
Republike Slovenije*

DRŽAVNI SVET – ŽE 25 LET STIČIŠČE INTERESOV DRUŽBE

- 47 DRŽAVNI SVET –
ŽE 25 LET STIČIŠČE INTERESOV
DRUŽBE
dr. Dušan Štrus
- 47 Povzetek
- 49 1. Uvod
- 51 2. Zgodovinski razvoj Državnega sveta
- 55 3. Status in vloga Državnega sveta v
slovenskem ustavnem sistemu
- 57 4. Pravna ureditev položaja Državnega sveta
- 61 5. Interesna sestava Državnega sveta
- 65 6. Volitve v Državni svet
- 80 7. Mandat Državnega sveta
- 82 8. Funkcija članov in predsednika Državnega
sveta
- 84 9. Imuniteta članov Državnega sveta
- 88 10. Nezdržljivost funkcije članov Državnega
sveta
- 89 11. Plačilo za delo članov in predsednika
Državnega sveta
- 92 12. Vodstvo in organizacija Državnega sveta
- 95 13. Pristojnosti Državnega sveta
- 176 14. Državni svet in Vlada
- 179 15. Vloga Državnega sveta na področju
medparlamentarnih odnosov
- 181 16. Vloga političnih strank v Državnem svetu
- 183 17. Sodelovanje Državnega sveta in civilne
družbe
- 188 18. Sklep
- 195 19. Viri
- 199 DRŽAVNI SVETNICE IN SVETNIKI
1992 – 2017

CONTENTS

INTRODUCTORY WORDS

7	MITJA BERVAR, <i>mag. manag., President of the National Council of the Republic of Slovenia in its fifth term</i>
13	BORUT PAHOR, <i>President of the Republic of Slovenia</i>
15	DR. MILAN BRGLEZ, <i>President of the National Assembly</i>
19	DR. MIRO CERAR, <i>Prime Minister</i>
23	DR. IVAN KRISTAN, <i>President of the National Council in the first term</i>
27	TONE HROVAT, <i>President of the National Council in the second term</i>
33	JANEZ SUŠNIK, <i>President of the National Council in the third term</i>
37	MAG. BLAŽ KAVČIČ, <i>President of the National Council in the fourth term</i>
41	MARJAN MAUČEC, <i>mag. posl. ved, Secretary of the National Council of the Republic of Slovenia</i>

THE NATIONAL COUNCIL – INTERCONNECTING SOCIETY FOR 25 YEARS

47	THE NATIONAL COUNCIL – INTERCONNECTING SOCIETY FOR 25 YEARS <i>Dušan Štrus PhD law</i>
47	Summary
49	1. Introduction
51	2. Historical development of the National Council
55	3. The status and role of the National Council in the Slovenian Constitutional System
57	4. Legal regulation of the National Council's position
61	5. Interest structure of the National Council
65	6. Elections to the National Council
80	7. Mandate of the National Council
82	8. Members and presidents of the National Council function
84	9. National Council member's immunity
88	10. Incompatibility of the National Council members' function
89	11. Members and presidents salary
92	12. Management and organization of the National Council
95	13. National Council's competences
181	14. The National Council and the Government
184	15. National Council's role in the inter parliamentary relations
185	16. The role of political parties in the National Council
188	17. Cooperation of the National Council and the civil society
193	18. Conclusion
199	MEMBERS OF THE NATIONAL COUNCIL 1992 – 2017

UVODNA
BESEDILA
INTRODUCTORY
WORDS



MITJA BERVAR,

*mag. manag., predsednik Državnega sveta Republike Slovenije
v petem mandatu*

MITJA BERVAR,

*mag. manag., President of the National Council of the Republic of Slovenia
in its fifth term*



Pred vami je monografija o Državnem svetu Republike Slovenije, ki je nedavno zaokrožil četrstoletnico svojega obstoja. Vsekakor gre najprej zahvala za dosedanje uspešno delo vsem bivšim predsednikom Državnega sveta, ki so orali ledino v konstituiranju političnega sistema naše mlade države, podpredsednikom in državnim svetnikom v vseh petih mandatih. Posebna zahvala gre tudi sekretarjem Državnega sveta in strokovnim službam, ki so svoje delo opravljale z velikim profesionalnim zanosom in neizčrpnim optimizmom, kar vse je zahtevalo prelomno obdobje utrjevanja državotvornih temeljev naše mlade demokracije.

Državni svet Republike Slovenije je drugi dom slovenskega parlamenta, ki ga je ustava konstituirala kot zastopstvo socialnih, gospodarskih, poklicnih in lokalnih interesov. Za razliko od Državnega zbora, ki je zastopstvo političnih skupin, je za Državni svet značilno interesno

You are holding a monograph on the National Council of the Republic of Slovenia which recently celebrated a quarter of a century of existence. Acknowledgement for its successful work so far goes to all former presidents of the National Council, who broke new ground in the constitution of the political system of our young country, to all vice-presidents and members in all five terms. Special acknowledgement also goes to the secretaries of the National Council and expert services, who carried out their work with great professional zeal and endless optimism, which was required at the turning point when the state-building foundations of our young democracy were being strengthened.

The National Council of the Republic of Slovenia is the lower house of the Slovenian Parliament, which was founded as a representative body of social, economic, business and local interests. Unlike the National Assembly,

zastopstvo poglavitnih segmentov družbe. Gre za unikatni sistemski pristop: izmed štiridesetih članov je v Državnem svetu zastopano 18 predstavnikov funkcionalnih interesov ter številčno najmočnejša skupina - 22 predstavnikov lokalnih/teritorialnih interesov. Ker pa je družba živ organizem je razumljivo, da so tudi interesi v daljšem časovnem obdobju izpostavljeni določenim izzivom. V Sloveniji posebej izstopata dve interesni skupini, ki jima bo v prihodnosti zagotovo treba posvetiti bistveno več pozornosti, saj sta se obe zaradi razvoja družbe znašli v posebnem položaju – to so mlade generacije, ki skušajo najti svoje mesto in si zagotoviti prihodnost in starejši sodržavljeni, ki zaradi starajoče se družbe postajajo vse številčnejša skupina. O zastopstvu obeh bi vsekakor veljalo razmisliti tudi v okviru Državnega sveta.

Drugi dom je konstruktiven element demokratičnega sistema, čeprav glede pristojnosti ni enakopraven s prvim domom - Državnim zborom. V omejenem obsegu sodeluje na zakonodajnem področju, kot to določa Ustava Republike Slovenije. Ima vpliv na sprejemanje odločitev in možnost opozoriti na nepravilnosti pri delu prvega doma; kljub temu, da ima končno odločitev prvi dom, je namen drugega doma dosežen, saj pridejo opozorila in predlogi drugega doma do političnih odločevalcev in splošne javnosti. To neravnovesje moči se je izkazalo za dobro, saj mora Državni zbor imeti končno možnost sprejemanja zakonov, s tem pa tudi sprejme odgovornost za sprejete zakone. Žal je bila leta 2013 Državnemu svetu odvzeta pristojnost za razpis referendum. Državni svet je to možnost uporabljal zelo preudarno in le dvakrat zahteval razpis referendum. Čeprav obstajajo med prvim in drugim domom razlike v načinu sestave, v vlogi in v njuni moči, pa je cilj obeh domov enak: sooblikovati čim boljše zakonodajo. In to je tudi najpomembnejše izhodišče za naše skupno parlamentarno delo v prihodnje. Dvodomnost slovenskega parlamenta sprejemajo tudi

which is a forum of political parties, the National Council represents the interests of important segments of society. This is a unique systemic approach: out of 40 members, the National Council comprises 18 representatives of functional interests and the strongest group in terms of number – 22 representatives of local/regional interests. However, society is a living organism. Therefore, it is understandable that interests face certain challenges during a longer period. In Slovenia, two interest groups particularly stand out, which will have to be paid more attention in the future, as they are both in a special position brought on by the development of society – these are young generations who attempt to find their place, and ensure their future, and older citizens whose number is on the rise due to the ageing population. The representation of both should also be considered within the National Council.

The lower house is a constructive element of the democratic system. However, in terms of competences, it is not equal to the upper house – the National Assembly. It participates in the legislative field to a limited extent as determined by the Constitution of the Republic of Slovenia. It impacts decision making, and can point out irregularities in the work of the upper house. Despite the upper house having the final say in decisions, the purpose of the lower house is achieved, since alerts and proposals of the lower house reach political decision-makers and the general public. This power imbalance proved to be good, since the National Assembly must have the final possibility to pass laws, thus assuming the responsibility for laws passed. Unfortunately, the National Council lost its jurisdiction to call a referendum in 2013. This option was utilised by the National Council very prudently, and the call for a referendum was only required twice. Although there are differences in the composition, the role and in the power of the upper and lower house, the objective of both houses is the same: to co-create the best legislation

druge države, še posebej evropske, saj je Državni svet eden od ustanovnih članov Združenja evropskih senatov.

Tako kot je dozorevala naša država, tako se je razvijal tudi Državni svet. V petindvajsetih letih razvoja mlade slovenske demokracije in delovanja Državnega sveta se je izkazalo, kako zelo pomembno je v parlament odpirati pot civilni družbi in prispevati k oblikovanju politike z več posluha za državljane. Državni svet je organizator številnih posvetov, predavanj in javnih razprav, s katerimi se predstavijo različne družbeno pomembne teme in vzpostavlja na argumentih utemeljen most med politiko in civilno družbo. Aktivno sodeluje s civilno družbo kot pokrovitelj projektov, med drugim je častni pokrovitelj projekta Rastoča knjiga, ki na inovativen način promovira vrednote znanja, mojstrstva in odličnosti mladih generacij.

Izkazalo se je, da lahko v okoliščinah predstavniške demokracije ponudi dvodomni parlamentarni sistem določene rešitve v smeri zmanjševanja demokratičnega primanjkljaja, kar je ena ključnih kritik državljanov, ko gre za njihov odnos do nacionalnih predstavniških teles in tudi ko gre za odnos do Evropske unije. Morda je to tudi razlog, da je dvodomnost v drugi polovici prejšnjega stoletja začela v svetu naraščati in je število drugih domov z dvodomnim predstavniškim sistemom od leta 1970 naraslo s 45 na današnjih 75 držav.

Pozitivne izkušnje Državnega sveta z vključevanjem interesov civilne družbe so vredne razmisleka tudi v kontekstu prizadevanj za izboljšanje komunikacije med nacionalnimi parlamenti in Evropskim parlamentom. Ko torej razmišljamo o možnostih izboljševanja delovanja Evropske unije v bodoče, lahko razmišljamo tudi o prihodnosti evropskega parlamenta kot dvodomnega telesa, s katerim bi lahko izboljšali legitimnost odločitev ter okrepili demokratičnost postopkov odločanja. Zavedati se moramo, da bo Evropska unija v prihodnje močnejša

possible, which is also the starting point of our joint parliamentary work in the future. The bicameral system of the Slovenian parliament is also accepted by other countries, particularly European countries, since the National Council is one of the founding members of the Association of European Senates.

Our country and the National Council have been developing side by side. In the 25 years of development of the young Slovenian democracy, it has proved to be very important to open the path to the parliament for civil society, and to contribute to the co-creation of politics with greater sensitivity to citizens. The National Council has organised numerous consultations, lectures and public discussions, where various socially important topics are presented, and an argument-based bridge between politics and civil society is established. The National Council cooperates with civil society as the sponsor of projects. It is also the honorary sponsor of the Growing Book project, which innovatively promotes the values of knowledge, mastery and excellence of young generations.

It has turned out that, in representative democracy, a bicameral parliamentary system may provide certain solutions towards reducing democratic shortcomings, which is among the key criticisms of citizens when it comes to their attitude to national representative bodies and to the European Union. This may also be the reason that the bicameral system began spreading worldwide in the second half of the previous century, and the number of lower houses and the bicameral representative system has grown from 45 to 75 countries since 1970.

Positive experiences of the National Council with including interests of civil society are also worthy of consideration in the context of efforts to improve communication between national parliaments and the European Parliament. When we think about the possibilities of improving the way the European Union works in the

le, kolikor bolj se bo z njo in njenimi odločitvami lahko identificiral vsak posamezen evropski državljan. Zato potrebujemo predvsem predloge takih sprememb, ki bodo odpirale prostor za več Evrope v srcih prav vsakega posameznega Evropejca.

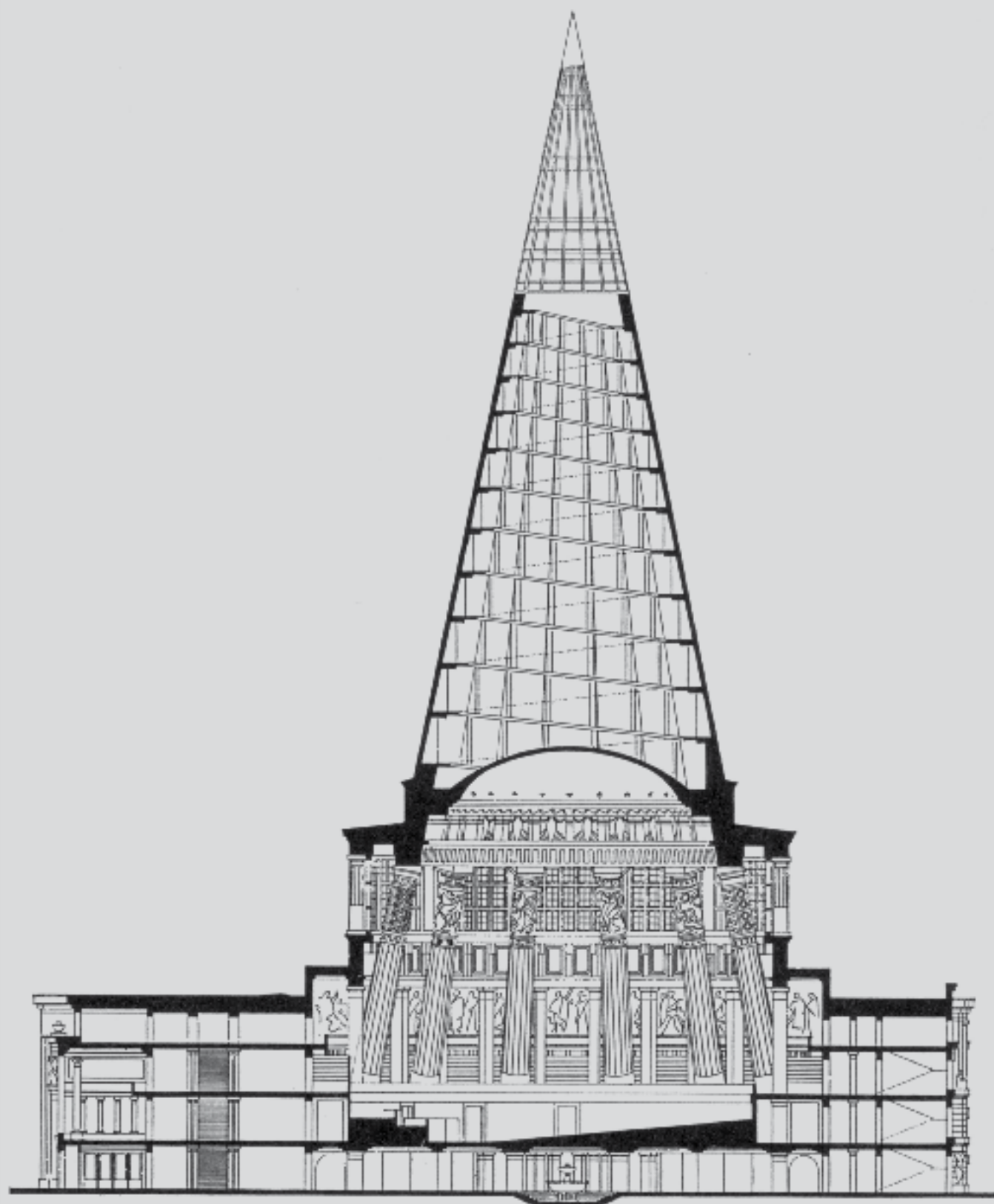
Pred nami so veliki izzivi. To velja za Slovenijo, Evropo in za ves svet. Da bi jih lahko premagali, je potrebno med drugim tudi medsebojno sodelovanje in zaupanje. Še posebej za Slovence je pomembno, da svoj pogled obrnemo naprej v prihodnost, da pustimo presojo zgodovine strokovnjakom in se osvobodimo nevidnih mračnih spon preteklosti. Imamo čudovito deželo in perspektivno državo, živimo v miru s sosednjimi državami in smo del skupne evropske zgodbe. Veseli me, da Državni svet dejavno soustvarja pozitivno družbeno okolje in verjamem, da bo tako tudi v prihodnje.

Zato vsem prihodnjim članicam in članom Državnega sveta želim, da bi strokovno, profesionalno in politično nadaljevali uspešno delo dosedanjih petih sklicev ter s svojo modrostjo še nadgradili naše delo in prispevali k razvoju slovenske parlamentarne demokracije v dobrobit državljanov in državljanov Republike Slovenije.

future, we might also consider the future of the European Parliament as a two-house body, which could improve the legitimacy of decisions and enhance the democracy of decision-making processes. We must be aware that the European Union will be strong only if every European citizen is able to identify with it and its decisions. So we particularly need proposals for changes which make room for more Europe in the heart of every individual European.

There are many challenges ahead. For Slovenia, Europe and the whole world. To overcome them, mutual cooperation and trust are essential. For Slovenians, it is particularly important to focus on the future, to leave the assessment of history to experts, and to liberate ourselves from the invisible dark constraints of the past. Our country is beautiful and has a lot of perspective. We live in peace with our neighbouring countries and are part of the common European story. I am glad that the National Council has been actively co-creating a positive social environment, and I believe that it will continue to do so.

Therefore, I wish for all future members of the National Council to professionally and politically continue the successful work of members in all five terms of office, to upgrade our work with their wisdom, and to contribute to the development of Slovenian parliamentary democracy for the benefit of the citizens of the Republic of Slovenia.



BORUT PAHOR,
predsednik Republike Slovenije

BORUT PAHOR,
President of the Republic of Slovenia



25. obletnica Državnega sveta Republike Slovenije je še ena od obletnic, ki nas spominjajo na prelomni čas in na dogodke, ki so omogočili izvedbo prvih demokratičnih volitev in osamosvojitve Slovenije. Čas osamosvajanja velja v kolektivni zavesti slovenskega naroda za čas sodelovanja in enotnosti in je temelj, ki podpira in navdihuje samozavestno odločanje glede naših skupnih prihodnjih stremljenj. Zato je pomembna ohranitev zgodovinskega spomina na tedanji trenutek in tudi poznejših premislekov o vseh stvarnih in simbolnih odločitvah, ki so bistveno oblikovale naš današnji čas in nas. Ena takšnih je Državni svet Republike Slovenije, institucija, ki smo jo dobili leto dni po osamosvojitvi Slovenije, in letos praznuje svojo prvo veliko obletnico.

The 25th anniversary of the National Council of Slovenia has been yet another anniversary to remind us of the momentous times and events which enabled the implementation of the first democratic elections and the independence of Slovenia. In the collective consciousness of the Slovenian nation, the time of gaining our independence is considered to have been a period of cooperation and unity and is the foundation which supports and inspires confident decision making about our common future aspirations. Therefore, it is important to preserve the historical memory of that moment and of later considerations about all the material and symbolic decisions which fundamentally formed our present and us. One of these is the National Council of Slovenia, the institution we established a year after Slovenia became independent, and which today celebrates its first big anniversary.

DR. MILAN BRGLEZ,
predsednik Državnega zbora

DR. MILAN BRGLEZ,
President of the National Assembly



Pred 25 leti smo, potem ko smo že zakorakali na pot samostojnosti in neodvisnosti, z ustanovitvijo Državnega zbora in Državnega sveta odprli tudi novo poglavje slovenskega parlamentarizma. Od tedaj pa do danes smo prehodili dolgo pot, pot, na kateri smo si nabrali številne sicer raznovrstne, a dragocene izkušnje. Zato verjamem, da je 25. obletnica dobra priložnost za kritično ovrednotenje preteklega dela in tudi za pogled v prihodnost.

Pisci slovenske ustave so Državni svet v primerjavi z Državnim zborom morda res postavili v drugačen položaj, vendar pa so mu namenili prav posebno vlogo. Zamišljen in oblikovan je bil kot nestrankarska posvetovalna institucija, ki bo s strokovnostjo in modrostjo hkrati protiutež prevelikemu vplivu strankarske politike pri sprejemanju zakonodaje v Državnem zboru in njegov popravek.

Twenty-five years ago, when we had already embarked on the path of autonomy and independence, the establishment of the National Assembly and of the National Council opened a new chapter in Slovenian parliamentarism. We have come a long way since then, having gained indeed diverse, yet valuable experience. I therefore believe that the 25th anniversary provides an excellent opportunity to critically evaluate the past work and to look forward to what the future may hold.

The authors of the Slovenian Constitution may indeed have given the National Council a different position compared to the National Assembly, but they nevertheless assigned it a very special role. It was designed and formed as a non-partisan consultative institution – an institution that, given its expertise and wisdom, would also serve as

Državni svet so si torej zamislili kot institucijo, ki deluje in obstaja ob Državnem zboru, kot institucijo, ki omogoča organizacijam strokovne civilne družbe dostop do politike, hkrati pa prispeva k bolj kakovostnim odločitvam in zmanjševanju pomanjkanja demokratičnosti v družbi.

A Državni svet so že od nastanka zamisli o njem motrili številni kritiki. Nazadnje je to leta 2012 botrovalo sicer neuspešnim, a v začetku precej odločnim poskusom spremembe Ustave Republike Slovenije, s katerimi bi ta organ ukinili, češ da Državni svet glavnih pričakovanj glede njegove vloge iz takšnih in drugačnih razlogov ni uspel izpolniti. Danes, pet let pozneje, je gotovo le, da je v mladi, komaj 25 let stari parlamentarni demokraciji pomembno in potrebno, da se o nadaljnji vlogi Državnega sveta, njegovih pristojnostih in učinkovitem opravljanju nalog, ki so mu bile zaupane, razmisli poglobljeno, predvsem pa strokovno in utemeljeno. Enak razmislek je vsekakor potreben tudi o drugih državnih organih.

Časi, v katerih živimo, so žal izjemno negotovi in nepredvidljivi. S spreminjanjem sveta in vse hitrejšim razvojem dogodkov v naši okolici se nedvomno spreminjajo tudi naše potrebe, s tem pa naš način sodelovanja, odločanja in odzivanja. Menim, da bomo zato v relativno kratkem času morali odgovoriti tudi na vprašanje, kakšen bo nadaljnji razvoj slovenskega parlamentarizma in kakšno naj bo sodelovanje med Državnim svetom in Državnim zborom, pri čemer gre, nenazadnje, tudi za odnos do drugih državnih organov in naddržavnih institucij. Če želimo, da se položaj Državnega sveta v celoti na novo uredi – po potrebi tako v sestavi kot v pristojnostih –, bomo morali napeti vse moči in verjamem, da bi bilo v tovrstnem postopku, ob odprti medsebojni komunikaciji in s tvornim sodelovanjem, mogoče odgovoriti tudi na še tako pereče dileme, ki bi ob tem nastale.

Naj nam ob teh korakih ne manjka zavedanja, da morata biti instituciji v nenehnem medsebojnem stiku, v

counterbalance and a correction to the excessive influence of party politics on the adoption of laws by the National Assembly. The National Council was thus conceived as an institution that operates and exists alongside the National Assembly – an institution making it possible for organisations of the expert civilian society to access politics, while contributing to a higher quality of decision-making and to the reduction of the democratic deficit in society.

Virtually since the emergence of the idea of its establishment, however, the National Council has been subject to considerable criticism. The latest example thereof includes unsuccessful, yet initially quite resolute attempts in 2012 to amend the Constitution of the Republic of Slovenia in the direction of abolishing the National Council. Arguments state that, for one reason or another, it had failed to meet the main expectations regarding its role. Today, five years later, the only sure thing is that in the young, merely 25-year old parliamentary democracy, it is important and necessary to carefully, professionally and argumentatively reflect on the future role of the National Council, on its responsibilities, and on the efficient performance of the functions entrusted to it. The same reflection is also very much needed in relation to other state bodies.

The times in which we find ourselves are unfortunately highly uncertain and unpredictable. The changing world and the increasingly rapid developments in our surroundings undoubtedly affect our needs and hence our way of cooperation, decision-making and response. I believe that in a relatively short period of time we will therefore have to answer a question concerning the direction in which the development of Slovenian parliamentarism should proceed and concerning further cooperation between the National Council and the National Assembly, which, ultimately, is also an issue of the relation to other state bodies and supranational institutions. If we want the

iskreni komunikaciji in tesnem sodelovanju ter da morata skupaj načrtovati krog in okvir prihodnjega sodelovanja. Ob tem ne gre le za blaginjo domovine ter državljanov in državljanek, ampak tudi in predvsem naših državljanov in državljanek, zato moramo iskati predvsem tisto, kar nas povezuje, ter tako poenoteni in združeni delovati v njihovem interesu. Le na ta način bomo lahko uspešno kos izzivom, pred katere je in bo postavljena naša domovina.

Iskrene čestitke ob 25. obletnici in srečno!

National Council to fully reposition itself – both in terms of composition and responsibilities if necessary – we will have to do everything we possibly can to make it happen. I am confident that, through open mutual communication and constructive cooperation, it will be possible in this process to solve even the most pressing dilemmas that might arise.

I hope that while taking these steps we do not lose the awareness that these two institutions need to be in constant contact with each other, pursue sincere communication and close cooperation, and jointly shape the form and framework of future joint endeavours. This does not only concern the welfare and prosperity of our country and our fellow citizens, but also and, above all, our citizens. Therefore, first and foremost we should focus on what unites us, and, thus united, act in their interest. Only in such a way can we successfully respond to the challenges our country currently faces and will be facing in the future.

Congratulations on your 25th anniversary and good luck!

DR. MIRO CERAR,
predsednik vlade Republike Slovenije

DR. MIRO CERAR,
Prime Minister



Petindvajset let je z vidika državnosti kratka doba, toda prav ta začetna leta so za nadaljnji razvoj države izjemnega pomena, saj ji vtisnejo temeljni pečat. Za našo državnost je še posebej pomembno, da so nam ta temeljni pečat v veliki meri vtisnile prav ključne demokratične ustavne vrednote in institucije, med katere sodi tudi Državni svet.

Vsaka država ima na začetku svoje demokratične poti težko nalogo. Vzpostaviti mora mora sistem delovanja pravne države in državotvornih institucij, z namenom učinkovitega izvajanja oblasti in suverenosti na svojem ozemlju. Čas pisanja in prvih let uresničevanja naše demokratične ustave je bil tudi zame osebno še posebej zanimiv, saj sem bil deležen posebne priložnosti in časti, da sem v tistem času sodeloval pri pisanju ustave ter različnih

From the perspective of statehood, twenty-five years is a brief period, but these initial years are of incredible importance for the further development of a country, as they leave a lasting mark. It is especially important for our statehood that this lasting mark was left, to a great extent, by key democratic constitutional values and institutions, among which was the National Council.

Every country faces a difficult task at the beginning of its democratic path. It must establish a system that works on the principle of the rule of law and based on state-building institutions for the purpose of effectively governing and maintaining sovereignty in its territory. The period in which our democratic constitution was written and the first few years of its implementation were especially interesting for me, as I was given a special

zakonov in drugih aktov, ki so njeno vsebino prenesli v pravni sistem.

Ustavodajalec je leta 1991 določil, da se bo v Sloveniji zakonodajna oblast izvrševala preko dvodomnega parlamenta, tj. preko Državnega zbora kot neposrednega zakonodajalca in Državnega sveta, ki mu ustava namenja specifične funkcije povezane z zakonodajnim postopkom. Pri tem ima prvi vlogo splošnega predstavniškega telesa, drugi pa je predstavnik nosilcev socialnih, gospodarskih, poklicnih in lokalnih interesov.

Ta specifična nepopolna dvodomnost ima svoje prednosti in slabosti. Toda vloge in pomena Državnega sveta v zakonodajnem procesu, ter kot predstavništva lokalnih in stanovskih družbenih interesov, nikakor ne gre podcenjevati. S svojo iniciativno, korektivno in svetovalno funkcijo pogosto pomembno prispeva k procesu odločanja o ključnih družbenih vprašanjih.

Ta njegova vloga v sistemu državne oblasti je včasih spregledana ali zanemarjena, mnogo je bilo tudi že predlogov o njegovem preoblikovanju ali celo ukinitvi. Takšne razprave so seveda v demokratični družbi lahko smiselne in utemeljene, vendar pa le, če se jih lotevamo odgovorno ter upošteva tako politična kot tudi strokovna merila. Povsem neprimerno je, če postanejo takšne razprave predmet politikantskih iger, kajti Državni svet je ena najpomembnejših ustavnih institucij in zato kot takšen zasluži spoštljivo vrednotenje in obravnavo.

Petindvajset let je že doba, ki omogoča dovolj samorefleksiven pogled na doslej prehojeno pot – tako Slovenije, kot njenih posameznih institucij. Kljub boljšim in slabšim časom lahko rečemo, da živimo v državi evropskih demokratičnih vrednot in v pravni državi, kjer pa je seveda še veliko prostora za izboljšave.

V tej luči si želim, da Državni svet še naprej ostane pomemben forum zakonodajnih ter širših družbenih razprav. Verjetno bo čas prinesel tudi možnost, da se na

opportunity and honour at that time to participate in drafting it and various acts and other instruments that transposed its content into our legal system.

In 1991, the constitutional authority determined that legislative authority would be carried out in Slovenia by means of a bicameral parliament, i.e. through the National Assembly as the direct legislative body and the National Council, to which the constitution gives specific functions related to the legislative procedure. The former has the role of a general representative body and the latter represents holders of social, economic, professional, and local interests.

This specific incomplete bicameral system has advantages and disadvantages. However, the role and significance of the National Council in the legislative procedure and as a body representing local and professional interests is not to be underestimated. By means of its proactive, corrective, and consultative function, it often contributes significantly to decision-making on key social issues.

This role in the system of state power is sometimes overlooked or neglected, and there have already been proposals to restructure or even abolish it. Certainly, such debates can be reasonable and justified in a democratic society, but only if they are undertaken in a responsible manner and take into consideration both political and professional criteria. It is wholly inappropriate if such debates become subject to political games, as the National Council is one of the most important constitutional institutions, and as such deserves to be evaluated and discussed in a respectful manner.

Twenty-five years is a period that allows us to have a self-reflective view of the path already travelled – by Slovenia and its individual institutions. Despite the ups and downs, we can say that we live in a country with European democratic values governed by the rule of law.

ustavni ter posledično zakonski in izvedbeni ravni ustrezno spremenijo nekateri vidiki organizacije in delovanja Državnega sveta, s čimer se bo lahko v skladu s potrebnimi časa konstruktivno dogradila njegova vloga v sistemu državne oblasti.

Ob tem jubileju Državnemu svetu čestitam za opravljeno delo in mu želim uspešno delovanje tudi v prihodnje.

However, there is still much room for improvement, of course.

Therefore, I would like to see the National Council remain an important forum for legislative and broader social debates. It is likely that time will also allow some aspects of the organisation and operation of the National Council to suitably change on a constitutional and consequently on a statutory and implementation level, whereby its role in the system of state authority can be constructively upgraded in accordance with the needs of the time.

On this anniversary, I would like to take the opportunity to congratulate the National Council on the work that it has done and hope that it continues to work successfully in the future.

DR. IVAN KRISTAN,

*predsednik Državnega sveta
v prvem mandatu*

DR. IVAN KRISTAN,

*President of the National Council
in the first term*



Sprašujem se, ali je res že petindvajset let? Hitro je minilo. V teh petindvajsetih letih je Državni svet – nepopolni drugi dom slovenskega parlamenta – živel bogato in dinamično življenje. Spominjam se prvega obdobja, ko so nas kar naprej hoteli ukinjati, ko so obiskovalcem parlamenta delili letake z naslovom *Ali veste, da imamo pri nas enodomni parlament?* Seveda za Državni svet kot novo institucijo, ki je zbujala precejšnje zanimanje, petindvajset let vendar ni dolga doba.

Zame kot profesorja ustavnega prava je bila funkcija predsednika Državnega sveta neke vrste podiplomska šola. Obvladati sem moral kar nekaj novih predmetov, za katere ni bilo nikakršnih skript. Prav pa mi je prišlo, da sem s kolegi v Nemčiji in Avstriji teoretično razpravljal o teh problemih.

Has it really been twenty-five years? Time has indeed flown by. During these twenty-five years, the National Council – the imperfect second chamber of the Slovenian parliament – has had a rich and dynamic life. I remember its early stages when the shadow of being shut down was constantly looming over us, and visitors to the parliament were handed flyers with the heading *Did you know that we have a unicameral parliament?* Of course, twenty-five years is not a terribly long time for a new institution such as the National Council that attracted considerable interest upon its installation.

Being a professor of constitutional law, the position of the President of the National Council afforded me the opportunity to continue my postgraduate education in a rather unique way. I had to master several new subjects for which there were no examination scripts. I made use of my colleagues in Germany and Austria to lead theoretical debates on relevant issues.

Odgovore na zapletena vprašanja je dala praksa in zagnanost zbrane ekipe; poleg mene, kot edinega profesionalnega politika, še maloštevilna četa »strokovcev«. Sekretarka Državnega sveta je postala Marija Drofenik, ki je prinesla s seboj prakso sekretarke Zbora združenega dela. Z Marijo je bilo mogoče razrešiti vse probleme. Moja tajnica je bila Mira Novinc, ki je zdaj že v pokoju.

Ponosen sem na eno prvih odločitev, ki velja še danes, namreč da v Državnem svetu ne bomo oblikovali klubov političnih strank, ampak bo naše delo temeljilo na petih interesnih skupinah, ki so določene v Ustavi. O tej odločitvi sem se dogovoril z dr. Janezom Drnovškom in s predsedniki političnih strank. V spominu mi ostaja, kako je bil nad to odločitvijo navdušen socialdemokrat Jože Pučnik. Se pa z njo ni strinjal Lojze Peterle.

Žal mi je, da nisem uspel s predlogom, da bi dosledneje sledili nemški ureditvi, ki ima za odločanje o odločilnem vetu na razpolago pet faz.

V mojem mandatu smo vzpostavili stike z nekaterimi drugimi domovi, med njimi z avstrijskim, francoskim, hrvaškim, nemškim, posebej z bavarskim senatom idr. Izmed teh sta bavarski senat in hrvaški županijski dom že ukinjena.

Ideja Plečnikovega parlamenta se do danes sicer še ni uresničila, vendar pa smo Plečnikovo idejo povzeli v logotipu Državnega sveta. Uvedli smo plaketo Državnega sveta kot priznanje za izjemen prispevek pri uveljavljanju ustavne vloge Državnega sveta. Med prvimi smo plaketo podelili Robertu Badinterju, predsedniku arbitražnega sodišča, ki ima zasluge za priznanje Republike Slovenije.

Čeprav Plečnikov parlament še dolgo ne bo uresničen, pa lahko rečemo, da je Državni svet kot nepopolni drugi dom v petindvajsetih letih vendarle dokazal svojo veljavo.

Legal practice provided the answers to complex issues. I also had my highly driven team to rely on, consisting of a small group of "pros", of which I was the only professional politician. Marija Drofenik, who had practical experience as the secretary of the Chamber of Associated Labour, assumed the position of secretary of the National Council. With Marija on our side, there was no issue we could not handle. My personal secretary was Mira Novinc who has now retired.

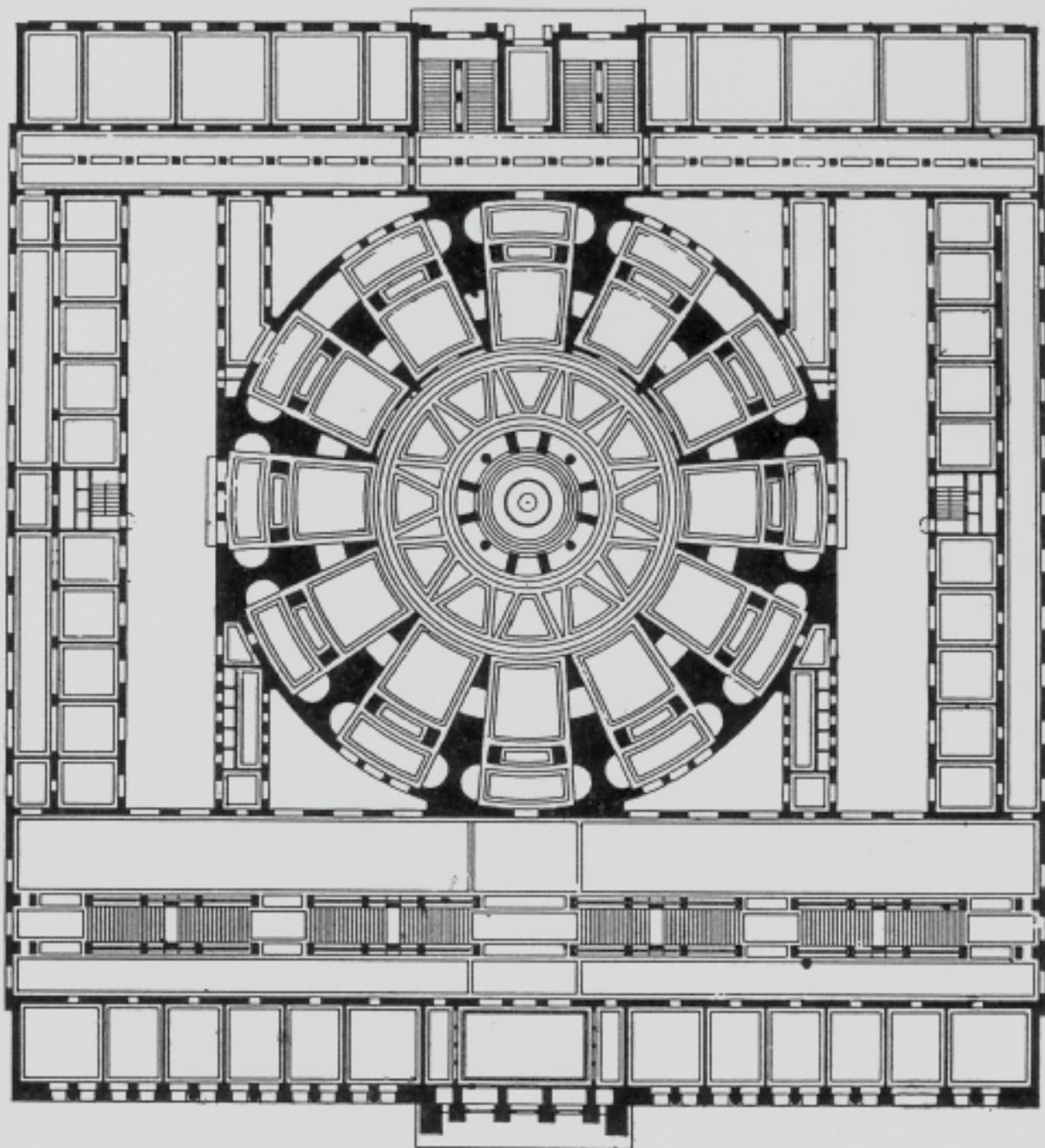
I am proud of one of my first decisions, which is still in force today, stipulating that the National Council would not feature clubs of political parties; instead, our work would be based on five interest groups as set out in the Constitution. This decision was made between me and dr. Janez Drnovšek as well as the chairs of political parties. I distinctly remember how excited this decision made the social democrat Jože Pučnik. Lojze Peterle however opposed it.

I regret that my proposal to stick to the German concept, with five phases to decide on the suspensive veto, fell through.

During my term, we established contact with some other chambers including those of Austria, France, Croatia, Germany, and specifically the Bavarian Senate. The latter and the Croatian Chamber of Counties (Croatian: Županijski dom) have been abolished in the meantime.

On another note, the parliament building designed by architect Jože Plečnik remains only on paper. We did however encapsulate his idea in the National Council's logo. The Plaque of the National Councils was introduced in a bid to recognise extraordinary contributions with regard to strengthening the constitutional role of the National Council. Among the first to receive the plaque was Robert Badinter, President of the Court of Conciliation and Arbitration, who deserves credit for the recognition of the Republic of Slovenia.

Although it seems that Mr Plečnik's parliament building design will remain on the shelf for quite some time to come, I can safely say that the National Council, as an imperfect second chamber, has proven its worth during its twenty-five years of operation.



TONE HROVAT,

predsednik Državnega sveta v drugem mandatu

TONE HROVAT,

President of the National Council in the second term



Ob petindvajsetletnici dvodomnega parlamenta ugotavljam, da čas izredno hitro obrača liste dogodkov. Imel sem srečo, da sem že od samega začetka doživeljal oblikovanje drugega doma z vsemi pozitivnimi izkušnjami, ki so nas kot manj strankarske politike bogatile, in tudi s tistimi grenkimi negativnimi praksami, ko Državnega sveta tako rekoč nobena politična stranka ni posebej spoštovala. Lahko rečem, da tudi moja ne.

Kot član Državnega sveta v prvem mandatu sem se imel priložnost veliko naučiti od zrelejših kolegov, pa tudi pridobiti izkušnje, ki sem jih nato s pridom uporabil v drugem mandatu, ko sem kot predsednik vodil Državni svet. Posebej se moram zahvaliti sekretarki Državnega sveta gospe Mariji Drofenik ter vsem profesionalnim sodelavcem Državnega sveta, brez katerih se drugi dom

With the 25th anniversary of the bicameral parliament around the corner, I came to the realisation just how quickly the hands of time turn. I was fortunate enough to witness the installation of the second chamber from the very beginning, soaking up the good experiences that have enriched those of us who were less inclined toward a specific party, along with some bitter moments thrown in the mix: I remember a time when virtually no political party had respect for the National Council. I can say that my own party was no exception.

Becoming a member of the National Council in its first term, I had the chance to absorb the knowledge of my more mature colleagues, and gather experience which came handy in the second term, when it was me who was running the National Council as its president. Special

parlamenta ne bi mogel oblikovati do mere, kot se je. Lahko rečem, da smo svetniki med sabo sicer vedeli, kateri politični opciji – stranki – je nekdo naklonjen, a sem ponosen, da teh razlik pri našem delu ni bilo čutiti. Vsi smo bili tako rekoč v isti »opciji« - na isti ladji.

Zelo lepo sva sodelovala tudi s podpredsednikom Državnega sveta dr. Avgustom Majeričem, pa tudi z drugimi svetniki. Nikoli, prav zares nikoli, nisem imel občutka, da s katerim od svetnikov ne bi mogel sodelovati, biti z njim sodelavec ali celo prijatelj, še posebej pa se moram zahvaliti svojemu predhodniku - prvemu predsedniku Državnega sveta in izrednemu sodelavcu ter mentorju v času mojega predsedovanja, gospodu dr. Ivanu Kristanu. Izredno iskreno mi je, nam je, pomagal z bogatim znanjem ustavnega prava, čeprav je bil že upokojen. Ne le, da sem se od njega veliko naučil, sam in skupaj s svojimi prijatelji je resnično pridodal izreden prispevek tudi v mojem mandatu.

Gospa sekretarka Marija Drofenik pa mi je stala ob strani in s svojim znanjem, izkušnjami in znanstvi v kabinetih senatov po Evropi odpirala vsa vrata. Tako sem postal tudi prvi predsednik Združenja evropskih senatov iz držav vzhodnega bloka oz. tretji po vrsti po ustanovitelju združenja. Predsednik francoskega senata gospod Christian Poncelet je bil kot ustanovitelj prvi, belgijski predsednik drugi in jaz tretji. Imel sem tudi srečo, da sem kot predsednik Združenja evropskih senatov odprl vrata članstva v združenje ruskemu svetu federacije, za kar so bili ruski kolegi v Sloveniji še posebej hvaležni. Državni svet je v tistem času odigral tudi pomembno vlogo na Balkanu in v Srbiji. Bili smo tako rekoč prva delegacija v Srbiji po bombardiranju in pričeli razgovore s pokojnim predsednikom Vlade Srbije Zoranom Đinđićem.

Posebej ponosen sem tudi na številne konference, predavanja pomembnih politikov in strokovnjakov, ki so prispevali k realizaciji ciljev Državnega sveta. Razprave in zaključki so pomembno prispevali k oblikovanju

thanks go to Marija Drofenik, Secretary General of the National Council, and all professional associates of the National Council, without whom the second chamber could not have evolved to the extent it has now. Councillors knew which political option/party each of us favoured, but I am proud to say that these differences were never an issue in our work. We were all in the same “option” and in the same boat.

I have fond memories of the collaboration with dr. Avgust Majerič who was Vice-President of the National Council, and other councillors. Indeed, I never once had the impression that collaboration with any of the councillors was impossible or that we could not be colleagues or even friends. I am especially grateful to my predecessor, the first President of the National Council, dr. Ivan Kristan, who was an exceptional associate, mentoring me during my presidency. He extended his help to me and my team with great sincerity, drawing on his extensive knowledge of constitutional law, even though he had already retired at that point. A valuable teacher, he and his friends made a truly significant impact on my term.

Secretary General Marija Drofenik stood by my side with her knowledge, experience and connections across the senate cabinets of Europe, opening doors for me. On the back of this, I became the first president of the Association of European Senates from any of the Eastern Bloc countries, and the overall third president after the founder of the association. Christian Poncelet, the founder of the Association and president of the French Senate, was the first president, the second president was from Belgium, with me taking on the role third. As president of the Association of European Senates, I was also fortunate to be able to open the door for membership of the Council of Federation from Russia. Russian colleagues in Slovenia were particularly grateful for this. At that time, the National Council played an important role on the Balkans

zakonodaje tako v okviru služb Vlade Republike Slovenije kakor tudi v procesu sprejemanja zakonodaje v Državnem zboru. S tem so se tudi potrebe po odločilnem vetu zmanjšale na minimum.

Ob spremljanju delovanja Državnega sveta Republike Slovenije opažam, da predsedniki in svetniki v vsakem mandatnem obdobju puščajo za seboj pomembne pečate. Še zlasti zadnji mandat se mi zdi pomemben pri uspešnem prizadevanju za oblikovanje Poslovnika Državnega zbora v delu, kjer bi se spoštovala ustavna določba o ponovnem odločanju. Ponovno odločanje ni enako kot ponovno glasovanje, ki se vseskozi strogo izvaja brez razprave, brez popravkov in brez alternative. Glasovanje je ukrep, ko poslanci pritiskajo na tipko potrditve ali zavrnitve zakona. Ponovno odločanje pa bi moralo vsebovati razpravo o problematiki sprejetega zakona, njegovi morebitni neustavnosti ali celo škodljivosti. Odločanje bi bilo lahko tudi tehtanje o boljšem predlogu – izpopolnitvi zakona, glasovanje pa zgolj zaključek takega popravka. Četrto branje zakona bi koristilo tudi Vladi, konkretni poziciji v Državnem zboru in imelo posledice na trajnost in kakovost zakonodaje.

Sedanjemu predsedniku Državnega sveta, celotni ekipi in svetnikom, še posebej predsedniku Vlade in Vladi Republike Slovenije ter poslancem želim čim več dobre volje in uspeha pri zaključku prizadevanj, da bi se postopki pri sprejemanju zakonodaje čim bolj izboljšali. Naši državi pa želim, da bi tudi v bodoče gojila demokracijo, odprto razpravo in iskala čim širši konsenz v dobrobit največjega deleža državljanov. Zagotovo je dvodomnost parlamenta ena od garancij za to, še posebej v okoliščinah, ko sta prvi in drugi dom izvoljena po različnih principih, to je v Državnem svetu ne samo v skladu s strankarskimi interesi, ampak tudi z interesi civilnega - nestrankarskega dela družbe. Pri tem je petindvajsetletnica prakse dela Državnega sveta zagotovo dobra iztočnica, kljub temu da ta praksa medijsko ni bila najbolj izpostavljena.

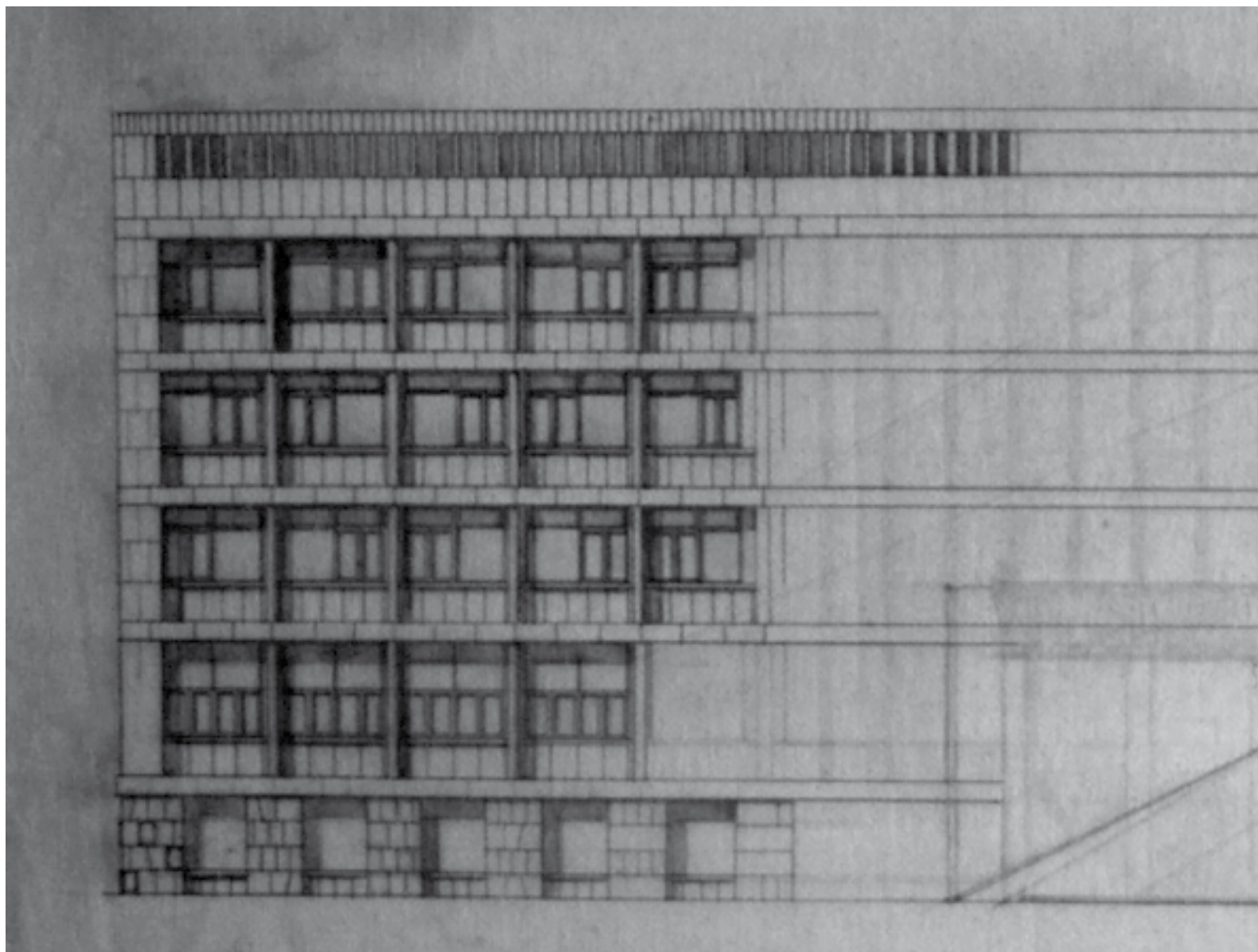
and in Serbia. In the aftermath of the Serbian bombing, we were practically the first delegation to go to Serbia, launching talks with Zoran Đinđić, the now deceased Prime Minister of Serbia.

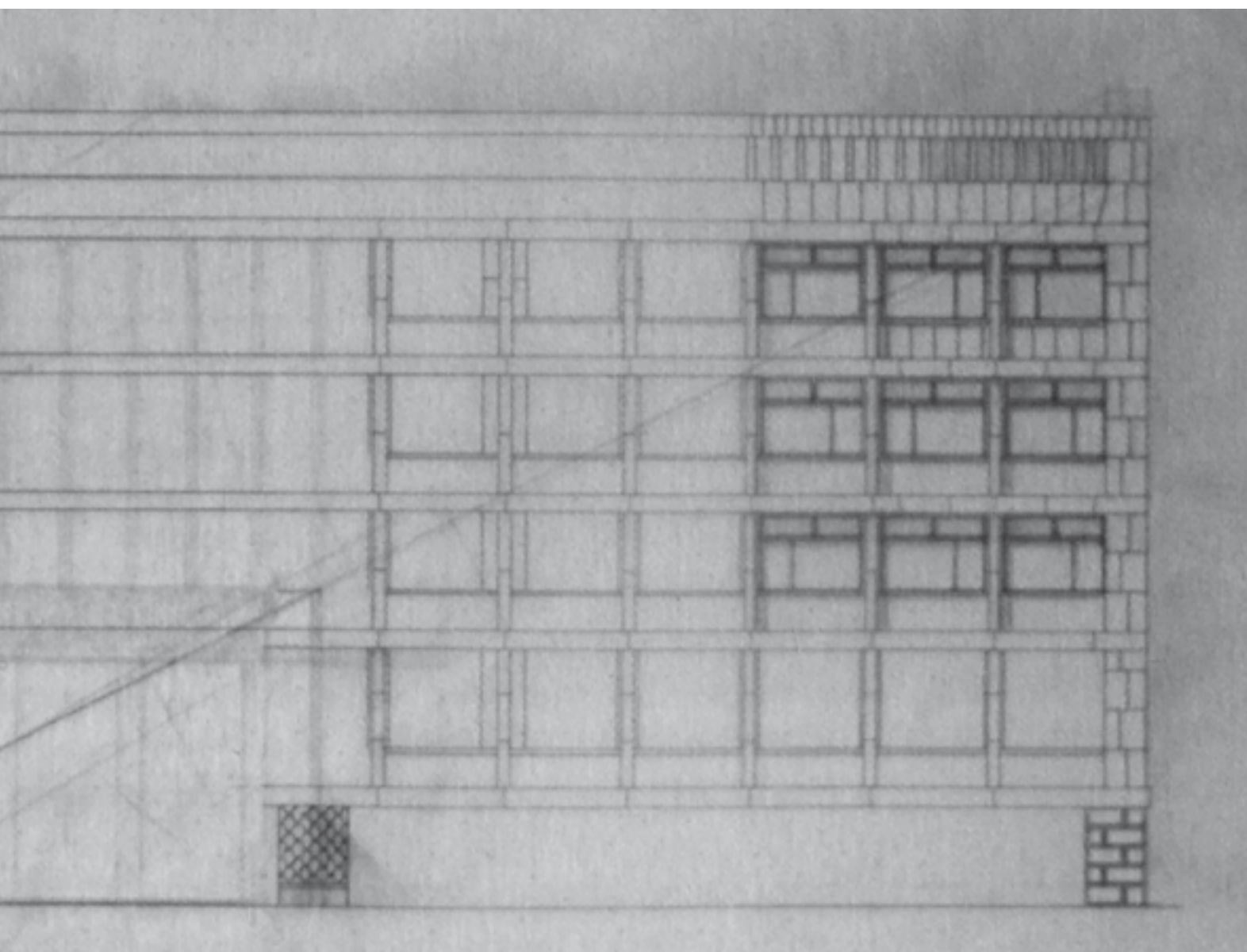
Among my proudest achievements are the conferences and lectures by prominent politicians and experts, who contributed to the realisation of the goals envisaged by the National Council. Debates and conclusions have played a big part in the shaping of legislation in the framework of the offices of the Government of the Republic of Slovenia, and in the enactment process on the National Assembly. This reduced the need for a suspensive veto to a minimum.

Keeping a close eye on the operations of the National Council of the Republic of Slovenia, I have noticed that presidents and councillors make a significant stamp on their terms. I find that the last term in particular was important for our successful bid to amend the Rules of Procedure of the National Assembly as regards the part setting out compliance with the constitutional provision on reviewing decisions. A decision review is not the same as a fresh vote which is implemented strictly without a debate, corrigenda and alternatives. When casting a vote the deputies simply press the button indicating whether they are in favour or against a law. A decision review on the other hand should entail a debate about the issues of the passed law, its possible non-compliance with the Constitution, and potential harmfulness. Decision-making could also be examining better proposals to enhance the law, whilst casting a vote should only be the conclusion of such an amendment. The fourth reading of a law would benefit the Government, the relevant position in the National Assembly and would improve the sustainability and quality of legislation.

I wish the current president of the National Council, the entire team and the councillors, but especially the Prime Minister of the Republic of Slovenia, the Government of the Republic of Slovenia and the deputies much good will and success with the conclusion of their efforts aimed at improving the enactment procedures. For our country, I wish that it continue to nurture democracy, open debate and seek out a wide consensus for the good of the biggest share of its people. Certainly, having

a bicameral parliament guarantees this, even more so in the context of the first and second chamber being elected through different methods. In the National Council, this not only plays to the partisan interests but also to the interests of the civil, i.e. non-partisan, part of society. In light of this, and even though the event has largely flown under the radar of the media, the 25th anniversary of the operations of the National Council seems like a good starting point.





JANEZ SUŠNIK,
predsednik Državnega sveta
v tretjem mandatu

JANEZ SUŠNIK,
President of the National Council
in the third term



Mandat predsednika Državnega sveta Republike Slovenije sem nastopil 2002 in ob izvolitvi nisem povsem poznal vseh pristojnosti in pomena tega zakonodajnega telesa, za katerega mi je bilo rečeno, da gre za drugi dom slovenskega parlamenta. Status drugega doma so Državnemu svetu priznavali v tujini, v Sloveniji pa ga je politika na podlagi njegove ustavne vloge razumela kot nepopolni drugi dom. V času mojega predsedovanja smo zelo dobro sodelovali z ostalimi evropskimi drugimi domovi. In medtem ko so v tujini naš status dvodomnosti priznavali, tega s strani Državnega zbora in Vlade nekako nismo čutili.

Svoj mandat v Državnem svetu sem preživel z dokaj mešanimi občutki. Državni svet kot zakonodajni korektiv ni dosegel pričakovanih rezultatov, saj so poslanci ob ponovnem odločanju praviloma zavzeli prvotno izhodišče.

In 2002, I took office as the President of the National Council of the Republic of Slovenia. Upon election I was unfamiliar with all the powers held by this legislator and its full significance. It was described to me as the second chamber of the Slovenian parliament. Abroad, the National Council was recognised as having second chamber status, whereas in Slovenia, it was regarded as an imperfect second chamber based on its constitutional role. During my time in office, we established good links with other European second chambers. And while our bicameralism was recognised internationally, we did not get the same feeling of recognition from the National Assembly and the Government.

My term in the National Council was therefore rather a mixed bag. As a legislative corrective mechanism, the National Council failed to generate the expected results,

Posledično se je institut odločilnega veta le redko uveljavil. Politika, ne glede na svojo orientacijo, se ni poglabljala v argumentacijo vsebin ugovorov Državnega sveta, temveč je odločala po svoji presoji. Vsakokratna opozicija je sicer zelo spodbujala državne svetnike k aktivnostim, kar pa trenutni Vladi in Državnemu zboru ni bilo najbolj povšeči.

Eden večjih in odmevnejših uspehov Državnega sveta v tretjem mandatu je bila uspeša zahteva za razpis referendum, na katerem so nato volivke in volivci zavrnilo spremembo zakona o prenosu milijarde evrov vrednega premoženja zavarovalnice Triglav na kapitalsko družbo (KAD). Vlada je morala ponovno razmisliti, kako pravice 750.000 državljanov urediti na drug način. V Državnem svetu smo predlagali razdelitev premoženja vsem fizičnim osebam ali pa preusmeritev tega premoženja neposredno na pokojninsko blagajno, v pokojninski sklad. Bili smo odločeni, da se pravica zavarovancev, ki so svoj lasten denar vplačevali v zavarovalnico Triglav, ne sme kršiti. Ta uspeh Državnega sveta še danes buri politične duhove.

Zakonodajne pobude so bile v Državnem svetu redke, saj si jih vplivni politični vodje niso želeli kakor tudi ne predstavniki drugih interesnih skupin, ki so jim bili svetniki blizu. Ker se je Državni svet soočal s finančnimi omejitvami in s tem kadrovsko podhranjenostjo je, posledično, po moji oceni šepala tudi učinkovitost strokovnega dela. Sam sem si Državni svet predstavljal kot nepolitični organ, a temu ni bilo tako. Kot opažam, se vpliv politike posebej okrepi pred volitvami. Skrajni čas bi bil za spremembo Zakona o volitvah v Državni zbor, in sicer v kombiniran način volitev, s čimer bi se zmanjšal vpliv političnih strank. Za Državni svet pa bi bile bolj kot elektorski način primerne neposredne volitve, s čimer bi državljani pridobili bistveno večji vpliv na zastopstvo svetnikov. Tudi sestava Državnega sveta v današnji obliki je že preživeta.

as the deputies tended to return to their initial position when reconsidering a law. As a result, the suspensive veto was rarely implemented. Politics, regardless of its orientation, never delved into the subject matter of the opposing arguments made by the National Council, instead making decision at its own discretion. The respective opposition encouraged members of the National Council to be active, which the Government and the National Assembly apparently never really liked.

One of the bigger and high-profile coups of the National Council during its third term was the successful request to call a referendum in which the voters were against amending the act that sets out the transfer of assets amounting to billions of euros held by the insurance company Zavarovalnica Triglav to the Pension Fund Management (KAD). The Government had to come up with a new way to regulate the rights of 750,000 citizens. The National Council proposed the allocation of the assets to all physical persons or redirecting these assets straight into the pension purse/pension fund. We were determined not to let the violation of the rights of policy holders who had paid their own money to the insurer Zavarovalnica Triglav. Even today, this coup of the National Council remains a talking point.

Legislative initiatives were a rare occurrence in the National Council, seeing as influential political leaders and representatives of other interest groups close to the councillors were not in favour of them. In the face of financial restrictions and severe understaffing, the National Council's professional efficiency, in my opinion, was impaired. Personally, I envisaged the National Council as a non-political body, but that was not the case. Through observation, I learnt that the influence of politics grows stronger with elections looming. In this context, it was about time to change the National Assembly Elections Act by introducing a combination of election methods

Državni svet se je vseskozi soočal z velikimi pritiski politike. Za časa Vlade Janeza Janše je bil predsedniku Državnega sveta odvzet celo status poklicnega predsednika. Šele s pritožbo na Ustavno sodišče je bil ta madež odpravljen in danes zaseda predsednik Državnega sveta v skladu z Ustavo Republike Slovenije mesto četrte najpomembnejše politične funkcije.

Ob zaključku svojega mandata 2007 sem podal predlog, da bi s popravkom Poslovnika Državnega zbora vpeljali t. i. četrto branje oziroma da bi Državni zbor razpravljal o amandmajih Državnega sveta pri sprejemanju zakonov, kar pa se žal do danes ni uresničilo. Po spremembi Ustave Republike Slovenije tudi referendum ni več v pristojnosti Državnega sveta, zato so njegove pristojnosti oslabiljene. Izpostavim naj tudi velik prispevek Državnega sveta v obliki številnih kakovostnih javnih posvetov, ki pa se jih žal veliko premalo uporablja v praksi.

in order to curtail the influence of political parties. Direct elections would be more convenient for the National Council than the electoral system, as this would give citizens considerably larger influence over the councillors' representation. Additionally, the composition of the National Council in its present form is outdated.

The National Council has always dealt with great political pressures. During the Cabinet of Janez Janša, the then-president of the National Council was even stripped of the status of a professional president. It took an appeal before the Constitutional Court to erase this stain; today, the president of the National Council is among the top four political functions in the country in accordance with the Constitution of the Republic of Slovenia.

At the end of my term in 2007, I put forward the motion to implement a fourth reading by way of a Corrigendum to the Rules of Procedure of the National Assembly, with an alternative proposal that the National Assembly, when passing laws, should discuss the amendments drafted by the National Council. Regrettably, this has never materialised. After amending the Constitution of the Republic of Slovenia, referendums are no longer within the competence of the National Council, which weakens its powers. Finally, I must also mention the great contribution made by the National Council in the form of a number of high-quality public consultations which are unfortunately underutilised in practice.

MAG. BLAŽ KAVČIČ,

predsednik Državnega sveta

v četrtem mandatu

MAG. BLAŽ KAVČIČ,

President of the National Council

in the fourth term



Na obstoj in delovanje vseh institucij v družbi je koristno gledati z vidika kritičnosti. Pri kritičnosti pa je bistven kriterij vrednostni sistem presojanja. Po občutku bi dejali, da bi temeljni kriterij presojanja verjetno bil prispevek institucij h kakovosti življenja državljanov. V razmerah delovanja samostojne slovenske nacionalne države od leta 1991 pa je to vse manj res. Sistemski okvir predstavlja prevladujoči svetovni družbeno-politični sistem, kapitalizem z vse bolj poudarjeno globalizacijo, financializacijo, stiskanjem (austerity). Ta sistem vzpostavlja in idealizira koncept vitke, šibke države, ki naj bi se osredotočala na represivne dejavnosti – vojsko, policijo, zaščito kapitalskih interesov, področja zaposlovanja, zdravstva, šolstva, pokojnin, športa, kulture, umetnosti ... pa prepušča trgu, privatnemu kapitalu, konkurenci. To so hkrati ideološke osnove nasprotovanja

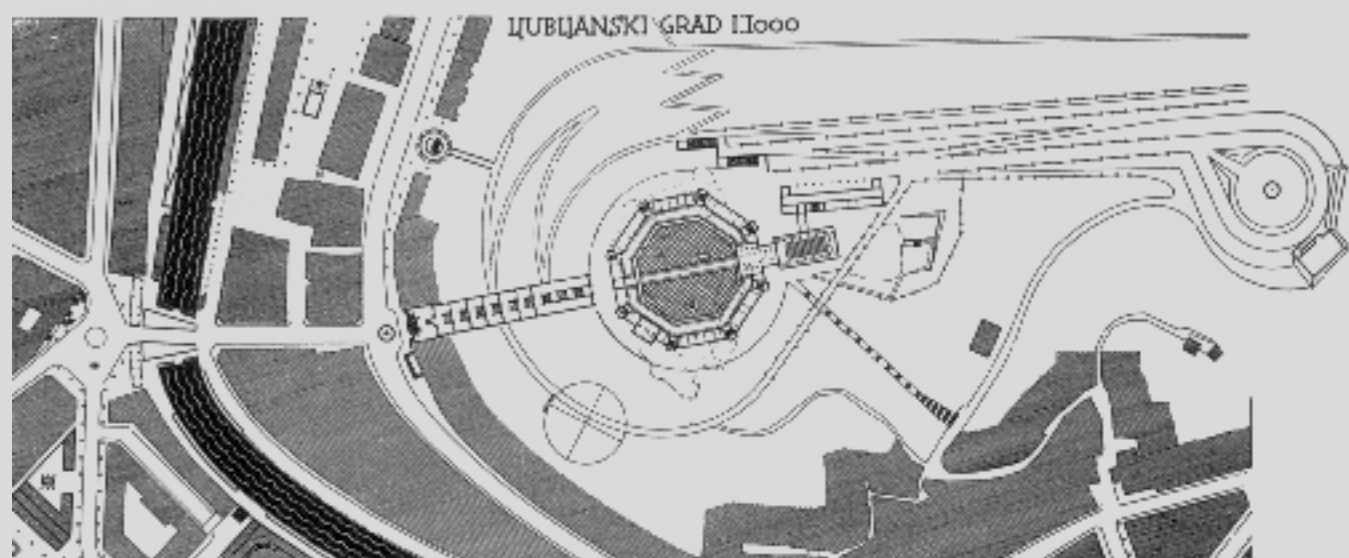
It is useful to view the existence and functioning of all institutions within a society from a critical perspective. When applying this perspective, the chief criterion should be the value-based evaluation system. The contribution of the institutions to the quality of life of the citizens should be the chief evaluation criterion, if we were to judge by our intuition. But considering the circumstances in which the independent Slovenian nation state had to function from 1991, this seems to be the case less and less. The system framework is made up from the prevalent worldwide social and political system, and capitalism with ever-increasing globalisation, financialization and austerity. This system establishes and idealises the concept of a lean, weak state that should focus on repressive activities – the military, police, protection of capital interests, whilst leaving areas such as employment,

delovanju Državnega sveta, ki je tudi v času mojega predsedovanja občasno dobilo oblike medijsko podprtega sovražstva.

Poleg bolj rutinskega dela vsebine dela, vezanega na delovanje Državnega zbora in Vlade Republike Slovenije, je Državni svet v četrtem mandatu nadaljeval izročilo prejšnjih mandatov in velik del pozornosti posvetil tematskim notranjim in javnim razpravam o vprašanju upravljanja z državnim premoženjem, nadaljeval uspeh prejšnjega mandata z referendumom o zavarovalništvu in ga nadgradil v predlog zakona. Pomembno je bilo oblikovanje pobud in resolucij v zvezi z gospodarsko in družbeno krizo, izpostavim naj tudi Resolucijo za izhod iz krize in pobudo evropskemu parlamentu za vzpostavitev kakovosti življenja državljanov kot temeljnega kriterija in usmeritve delovanja nacionalnih politik in politike EU, vključno s spremembo koncepta delovanja monetarnega sistema EU.

healthcare, education, pensions, sport, culture and the arts up to the market, private capital and competitiveness. At the same time these are the ideological bases for opposing the operations of the National Council which has occasionally been on the receiving end of a media-fuelled frenzy even during my presidency.

In its fourth term, the National Council not only pursued the more or less routine work associated with the operations of the National Assembly and the Government of the Republic of Slovenia, it also continued the legacy of earlier terms, focusing greatly on internal and public debates on specific issues, i.e. state asset management, and continued the success of the previous term by holding a referendum on the insurance industry, promoting it to a bill. An important task was to draw up initiatives and resolutions in connection with the economic and social crisis; in this regard, it is necessary to point out the Exit Strategy, and the initiative put forward to the European Parliament to establish citizens' quality of life as the main criterion, and the orientations for the operation of national politics and EU politics, including changing the operational concept of the EU monetary system.



MARJAN MAUČEC,

*mag. posl. ved, sekretar Državnega sveta
Republike Slovenije*

MARJAN MAUČEC,

*mag. posl. ved, Secretary
of the National Council
of the Republic of Slovenia*



V eč kot tretjino svoje delovne dobe sem povezan z delovanjem Državnega sveta Republike Slovenije. Leta 2002 sem bil prvič izvoljen za državnega svetnika, in sicer kot predstavnik lokalnih interesov ter v celotnem petletnem mandatu vodil Interesno skupino lokalnih interesov. Poleg zastopanja raznolikih interesov v skladu s pristojnostmi, kot jih nalaga Ustava, smo se v tem obdobju zelo veliko ukvarjali s temami, povezanimi z vstopom v zvezo NATO in Evropsko unijo. Veliko pozornosti smo namenili našim rojakom v tujini, kot državni svetnik pa sem se posebej veliko ukvarjal s problematiko izbrisanih ter z mejnimi vprašanji z Republiko Hrvaško.

V mandatu 2007–2012 sem bil prvič izvoljen za sekretarja Državnega sveta. V začetku mandata smo posodobili Poslovnik Državnega sveta. To je bilo nadvse turbulentno obdobje, v katerem je Državni svet imel zelo velike

I have been involved in the operations of the National Council of the Republic of Slovenia for more than a third of my career. I was first elected as a national councillor in 2002, specifically as a representative of local interests. I spent my entire five-year term running the interest group for local interests. In addition to representing varied interests in accordance with the powers conferred by the Constitution, this period was also heavily marked with topics relating to the accession to NATO and the European Union. We paid particular attention to our compatriots abroad. As a member of the National Council, I was greatly invested in the issue of the “erased” persons and the border dispute with the Republic of Croatia.

In the 2007–2012 term, I was elected as the Secretary of the National Council for the first time. At the beginning of the term, the Rules of Procedure of the National

težave s svojim nadaljnjim obstojem. Dovolim si izreči oceno, da je bilo temu tako, ker smo postali zaradi svojega (uspešnega) dela nekoliko moteč dejavnik določenim političnim opcijam. Nekateri, predvsem tisti, ki jim je padal politični rating, pa so v predvolilnem času v napadih na Državni svet celo videli svojevrstno politično priložnost in poskušali na javnosti všečen način predstaviti predvsem pozitivne finančne učinke ukinitve. Izpostaviti je treba, da je šlo za čas hude finančne krize, s katero se je spopadala naša država. Podatek, da bi z ukinitvijo Državnega sveta država privarčevala 2 milijona evrov, kolikor znaša letni proračun naše institucije, je bil zato nekaterim še posebej prikladen. A jim ni uspelo in zanimivo je, da nobena od teh političnih opcij na naslednjih volitvah ni prestopila 4 % parlamentarnega praga, ki je pogoj za vstop v Državni zbor. To je bil tudi čas, ko smo se v Državnem svetu vsebinsko posvetili poglobljeni analizi gospodarske in finančne krize, iskali njune vzroke in predstavili tudi rešitve, ki smo jih posredovali Evropski komisiji.

V aktualnem mandatu 2012–2017 ponovno opravljam funkcijo sekretarja Državnega sveta. Upam si reči, da smo v tem mandatu z dnevnega reda uspeli odstraniti točko vprašanja obstoja ali neobstoja Državnega sveta. Še več, uspelo nam je rešiti problematiko zakonitosti izplačevanja nadomestil državnim svetnikom za opravljeno delo, saj to pravno ni bilo rešeno že od samega konstituiranja.

Državni svet je pridobil na medijski prepoznavnosti in je kot državotvorni organ umeščen v slovenski politični prostor tako formalno kot tudi neformalno. Vsekakor je temu botrovalo tudi dejstvo, da z izvolitvijo nove generalne sekretarke Državnega zbora komunikacija med obema domovoma parlamenta poteka zelo pozitivno in v obojestransko korist. Želja Državnega sveta ostaja, da bi Državni zbor pristopil k spremembi svojega poslovnika tako, da bi omogočil ponovno odločanje o določenem členu predlaganega zakona, za katerega Državni svet meni,

Council were subject to an update. This period was quite turbulent and the future existence of the National Council was uncertain. I would venture to say that this was because our (successful) operations had become somewhat disruptive to certain political options. Some people, especially those with a declining political rating, saw the pre-election impugnations on the National Council as a great political opportunity, making efforts to spin the abolition of the Council to the public as a financially sound decision. It should be noted that at that time the country was knee deep in a severe financial crisis. The fact that the state would save 2 million euros – the annual budget of our institution – by abolishing the National Council was therefore quite convenient to some. But this plan failed. Interestingly, at the next election none of the political options involved went over the 4% threshold which is prerequisite for the election to the National Assembly. It was also the time during which the National Council focused on an in-depth analysis of the economic and financial crisis, looking for their root causes and proposing solutions that were forwarded to the European Commission.

In the present term 2012–2017, I am again acting as the secretary of the National Council. I would argue that in this term, we have managed to settle the matter regarding the existence or abolition of the National Council, eliminating this item from the agenda. More than that – we managed to solve an issue which has not been settled legally since the installation of the Council, namely that of the legality of a compensation allowance paid out to members of the National Council for their work.

The National Council gained visibility among the media, and positioned itself as a state-building body in the Slovenian political arena both formally and informally. This is certainly also down to the fact that the election of the new secretary of the National Assembly gave rise to

da ga predlog zakona ne rešuje primerno. S tem bi se izognili ponovnemu odločanju o celotnem zakonu.

Pred dvema letoma smo podpisali pobudo za spremembo mestnega prostorskega načrta Mestne občine Ljubljana za umeščanje v prostor stavbo Plečnikovega parlamenta, ki je od samega začetka tudi simbol Državnega sveta, na kar smo v Državnem svetu še posebej ponosni.

Na koncu naj se zahvalim vsem sodelavcem za strpnost, marljivost, uspešno in strokovno delo. Z vso odgovornostjo lahko rečem, da je to izkušena ekipa sodelavcev, ki ji ni para. Zahvala gre tudi vsem trem predsednikom Državnega sveta, s katerimi sem sodeloval v skoraj 15-ih letih in skupaj z njimi doživel veliko lepih trenutkov, ki se jih bom z veseljem spominjal.

a very positive and mutually beneficial communication between both chambers of the parliament. The National Council wishes that the National Assembly would approach the amendment of its Rules of Procedure in such a way as to enable a review of the decision of the relevant article in the proposed law, which the National Council deems as not being handled adequately in the bill. This would prevent reviewing decisions concerning the entire law.

Two years ago we signed the initiative for a change of the Municipality of Ljubljana's city spatial plan concerning the location of Plečnik's parliament building which has been a symbol of the National Council since the very beginning, and is something that the National Council is particularly proud of.

Allow me to conclude with a thank you to all my colleagues for their patience, diligence and successful and professional work. I can say, with full responsibility, that we have a remarkable team of experts with an impressive track record. Special thanks also go to the three previous presidents of the National Council, with whom I collaborated over the past almost 15 years, sharing with them many fond memories which I will cherish forever.





DRŽAVNI SVET –
ŽE 25 LET STIČIŠČE
INTERESOV DRUŽBE
THE NATIONAL COUNCIL –
INTERCONNECTING
SOCIETY FOR 25 YEARS



DRŽAVNI SVET – ŽE 25 LET STIČIŠČE INTERESOV DRUŽBE¹

dr. Dušan Štrus²

THE NATIONAL COUNCIL – INTERCONNECTING SOCIETY FOR 25 YEARS¹

Dušan Štrus PhD law²



POVZETEK

Državni svet je nastal s sprejemom slovenske ustave pred 25-imi leti, zaradi česar spada med najmlajše druge domove parlamentov v Evropi. Kljub temu, da je bil plod kompromisa ter da ima šibke svetovalne, predlagalne in odločilne pristojnosti, ima pomembno vlogo v sistemu zavor in ravnovesij slovenskega ustavnega sistema. Zaradi interesne sestave Državnega sveta so razprave v njem strokovne in manj politično obarvane kot v Državnem zboru. Na delovanje Državnega sveta velikokrat vplivajo ideje s posvetov, ki jih organizira v sodelovanju s civilno družbo. Slednja je v Državnem svetu našla mesto

¹ Recenzenta dela prof. dr. Bojan Dobovšek, prof. dr. Franc Grad.

² Namestnik sekretarja Državnega sveta Republike Slovenije in višji predavatelj na Fakulteti za upravo Univerze v Ljubljani, dusan.strus@ds-rs.si.

SUMMARY

The National Council was established with the Constitution of the Republic of Slovenia 25-years ago. It is one of the youngest second chambers in Europe. It was established as a compromise institution with weak advisory and suspensory jurisdictions. Nevertheless it has an important role in the system of checks and balances of the constitutional system of the Republic of Slovenia. Deliberations in the National Council are very professional and less political compared to the National Assembly due to the composition of the National Council. It organizes several

¹ Review prof. dr. Bojan Dobovšek, prof. dr. Franc Grad.

² Deputy Secretary General of the National Council of the Republic Slovenia and Senior Lecturer at the Faculty of Administration, University of Ljubljana, dusan.strus@ds-rs.si.

za predstavitev mnenj glede predlagane zakonodaje ter delovanja države in njenih institucij. Državni svet vseskozi strmi k oblikovanju in sprejemanju kvalitetnejše zakonodaje ter odpravljanju neustavnih norm v slovenskem pravnem redu. Z idejo o spremembi postopka ponovnega odločanja želi Državni svet ravno prek uvedbe možnosti spreminjanja zakona v postopku ponovnega odločanja o zakonu odpreti možnost za popraviljanje slabih zakonskih rešitev.

consultations in cooperation with the civil society. Ideas of the civil society produced at the consultations are used by the National Council in the legislative procedure. The civil society found a place for presentation of ideas about the legislation, Slovenian state and its institutions in the second chamber of the Slovenian Parliament. The aim of the National Council is to influence the quality of the legislation of the Republic of Slovenia and to propose legislation or even try to abolish any unconstitutional legislation in Slovenia. In order to adopt better legislation the National Council wants to change the regulation of the reconsideration procedure in the Rules of Procedure of the National Assembly. In the reconsideration procedure the possibility of the National Council to propose amendments within the veto could be introduced, so that the National Assembly could discuss them. The National Assembly would therefore, by deciding on the amendments and the law as a whole, adopt a final decision regarding the proposed act, leading to higher quality legislation.

1. UVOD

Po tem, ko smo leta 2016 praznovali 25. obletnico sprejema Ustave Republike Slovenije (v nadaljevanju: Ustava),³ ki je uredila temelje demokratične ureditve, letos obeležujemo petindvajsetletnico ustanovitve Državnega sveta Republike Slovenije (v nadaljevanju: Državni svet).

S sprejemom Ustave iz leta 1991 sta bili na področju zakonodajne veje oblasti v Republiki Sloveniji, ustanovljeni dve instituciji, in sicer Državni zbor in Državni svet. Državni zbor je bil v Ustavi opredeljen kot politični dom slovenskega parlamenta, medtem ko je bil Državni svet zamišljen kot svetovalno telo, ki zastopa posebne in skupne socialne, gospodarske, poklicne in lokalne interese. Člani Državnega sveta predstavljajo lokalne in funkcionalne interese. V okviru slovenskega ustavnega sistema lahko Državni svet uvrstimo med svetovalne in nadzorne institucije, saj je njegova naloga predvsem opozarjanje na nedorečene ali nedomišljene odločitve Državnega zbora, ki mu je po ustavni ureditvi pridržana pristojnost odločanja v zakonodajnem postopku. Temeljni smisel obstoja Državnega sveta je namreč ravno v tem, da prispeva k sprejemanju čim bolj kakovostne zakonodaje. Državni svet lahko opravlja svojo ustavno vlogo predvsem v razmerju do Državnega zbora, saj so vse njegove funkcije vezane na delovanje Državnega zbora. Gre namreč za organ, ki deluje v okviru zakonodajne veje oblasti, saj lahko predlaga zakone, daje veto na zakone, itd.⁴

Pričujoče delo poskuša prek zgodovinskega pregleda pojasniti dejavnike, ki so vplivali na pravno ureditev položaja Državnega sveta kot jo poznamo danes, ter obenem

1. INTRODUCTION

In 2016 the Republic of Slovenia celebrated the 25th anniversary since the adoption of the Constitution of the Republic of Slovenia (hereinafter: Constitution)³ which set the foundation for our democratic regime. A year later (in 2017) we celebrate the 25th anniversary since the National Council of the Republic of Slovenia (hereinafter: National Council) was established.

With the adoption of the Constitution in 1991, two institutions were set as the representatives of the legislative branch in the Republic of Slovenia – the National Council and the National Assembly. The latter was defined as the “political home” of the parliament, whereas the National Council was planned to have an advisory function and would represent social, economic, professional, and local interest groups. Members of the National Council are therefore representatives of local and functional interests. One of the main tasks of the National Council as a supervisory and advisory institution is alerting of inadequate legislative solutions adopted by the National Assembly which has the main authority to adopt new acts in the Slovenian legislature. The National Council does not make any final decisions in the legislative procedure. It cooperates in the legislative procedure though its reports and remarks about all matters within the jurisdiction of the National Assembly. The main purpose of the National Council is in fact cooperation with the National Assembly which dictates the Slovenian legislative procedure. The National Council’s activity should ensure the quality of legislature adopted by the National Assembly. All of the National Councils functions are bound to the activity of the National Assembly. Its main purpose is to

3 Gl. Ustava Republike Slovenije, Uradni list RS, št. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13 in 75/16.

4 Tako Grad, Franc, 2013: Parlamentarno pravo, GV Založba, Ljubljana, str. 100, 101. Prim. dr. Ivan Kristan, Dvodomnost slovenskega parlamenta, Pravniki, št. 9-10/1996, str. 455.

3 See also Constitution of the Republic of Slovenia, Official Gazette RS, nr. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13 in 75/16.

orisati pravno ureditev, status in vlogo omenjene institucije v slovenskem pravnem redu. S ciljem boljšega razumevanja delovanja Državnega sveta so pojasnjeni tudi način oblikovanja, sestava in organizacija Državnega sveta. V tem oziru je posebna pozornost namenjena predvsem odločitvam, ki so botrovale opredelitvi poklicne funkcije predsednika Državnega sveta in določanju plačila za delo državnim svetnicam in svetnikom. V okviru poglavja o pristojnostih Državnega sveta so predstavljene vse trenutne in pretekle pristojnosti omenjenega organa, pri čemer je posebna pozornost namenjena idejam o spremembi postopka ponovnega odločanja, saj bi ta sprememba lahko bistveno prispevala k sprejemanju kakovostnejše zakonodaje. Ker Državni svet predstavlja most med civilno družbo in politiko, je posebno poglavje namenjeno tudi njegovemu odnosu s civilno družbo in doprinosu tega odnosa k vsebini politike na ravni države.politiko.

Kot bo razvidno iz pričujočega besedila, se je Državni svet v preteklosti soočal s številnimi težavami, ki so bile posledica ustavne in zakonske podnormiranosti omenjene institucije. S pomočjo pravne teorije in odločb Ustavnega sodišča so bila določena vprašanja glede samega statusa in delovanja Državnega sveta odpravljena, vendar ostajajo odprta še številna področja, na katerih še ni doseženega konsenza med obema zakonodajnjima organoma. Ravno zato se je ob 25-letnici delovanja Državnega sveta treba zazreti v prihodnost in na podlagi objektivne ocene preteklih izkušenj oblikovati predloge ter ideje, katerih uresničitev bi omenjeni instituciji omogočila, da bi še bolj tvorno prispevala k razvoju slovenskega parlamentarnega sistema.

cooperate with the legislative branch by making draft laws or inducing a veto on a law.⁴

This article tries to explain all the factors that influenced the regulation of the National Council's position as we know it today and illustrate legal regulation, status and its role in Slovenian legislature. In order to better understand the National Council, the way it was formed, its structure, and organization, are also explained in the article. Special attention is given to decisions that determined the professional function of the President of the National Council and adopted provisions about National councilors' wages. The chapter about jurisdictions of the National Council explains all current and past jurisdictions of this institution and emphasizes ideas about changing the reconsideration of an act procedure, as it would lead to adoption of higher quality legislature. Since the National Council represents a bridge between civil society and politics, a special chapter explains its relationship with the civil society and benefits of this relation to national political content.

As this article will illustrate, the National Council has in its past faced numerous problems, that were a consequence of its barely sufficient constitutional and legal regulations. Legal theory and decisions of the Constitutional Court helped solve some of the problems regarding the status and activity of the National Council; however, many fields where consensus was not reached between legislative institutions remain open. As a result, the 25th anniversary of establishment of the National Council is a great opportunity to look towards the future and design new suggestions and ideas based on past experiences and objective evaluations, which could effectively contribute to the development of Slovenian parliamentary system.

4 Dr. Franc Grad, *Parlamentarno pravo*, GV Založba, Ljubljana, 2013, p. 100, 101. Prim. dr. Ivan Kristan, *Dvodomnost slovenskega parlamenta*, *Pravnik*, nr. 9-10/1996, p. 455.

2. ZGODOVINSKI RAZVOJ DRŽAVNEGA SVETA

Zgodovina Slovenskega Državnega sveta ne sega v davno preteklost. To je logično že zaradi dejstva, ker Slovenija ni bila samostojna in suverena država pred letom 1991. Kljub temu smo Slovenci v preteklosti pridobili pomembne izkušnje z dvodomnimi in večdomnimi predstavniškimi telesi, ki smo jih s pridom uporabili v času oblikovanja današnjega Državnega sveta.

2.1. Pred osamosvojitvijo Slovenije

V preteklosti smo Slovenci prebivali v različnih državnih tvorbah z različnimi oblikami predstavniških teles, zaradi česar smo pridobili izkušnje z dvodomnostjo ali celo več-domnostjo predstavniškega telesa. Parlament v času Avstro-Ogrske je bil na primer sestavljen iz dveh domov, Gosposke zbornice in Poslanske zbornice, pri čemer smo imeli Slovenci svoje predstavnike v obeh domovih.⁵

Po razpadu Avstro-Ogrske je bil za obdobje med obema vojnama značilen unitarizem in državni centralizem. V kratkem obdobju med letoma 1931 in 1939, ko je bila ustanovljena hrvaška banovina in razpuščena narodna skupščina, je bil v Kraljevini Jugoslaviji uveden dvodomni parlamentarni sistem. Tega je z diktaturo uvedel kralj s sprejemom oktroirane ustave. Takratni parlament je bil sestavljen iz prvega doma, Narodne skupščine in drugega doma, Senata, ki ni bil namenjen enakopravnemu predstavljanju različnih jugoslovanskih narodov, temveč krepitvi kraljeve oblasti. Kralj je namreč imenoval polovico članov Senata in si na ta način zagotovil pomemben vpliv v zakonodajnem postopku.⁶

5 Repe, Božo, 2002: Od prvih zborov Slovanov do Državnega zbora Republike Slovenije, v: Državni zbor Republike Slovenije 1992-2002 (ur. Jožica Velišček e tal.), Ljubljana, str. 94.

6 Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, str. 131-135.

2. HISTORICAL DEVELOPMENT OF THE NATIONAL COUNCIL

The history of the Slovenian National Council is short, due to the fact that Slovenia did not gain its independence until 1991. However, Slovenia has had many important experiences with bicameral and multicameral representative bodies throughout history. These experiences were used when National Council was formed in 1991.

2.1. Before independence

Throughout history, the Slovenian people have lived in different countries with different forms of representative bodies, which enabled us to obtain experience with bicameral or even multiple chamber representative bodies. For example – the Austro-Hungarian parliament was bicameral consisting of the Chamber of Deputies and the Chamber of Lords in which Slovenian people had their representatives.⁵

Unitarism and national centralism prevailed after the collapse of Austro-Hungary and between both world wars. In the short period between 1931 and 1939, when the Croatian banovina was founded and the National Assembly was dissolved, the King of the Kingdom of Yugoslavia imposed a constitution which anticipated a bicameral parliament system. The parliament consisted of the National Assembly and the Senate. The latter was not intended to equally represent the Yugoslav nations, but to strengthen the King's power. He had the authority to name half of the Senates representatives and in that way gained strong influence in the legislative procedure.⁶

5 Repe, Božo, 2002: Od prvih zborov Slovanov do Državnega zbora Republike Slovenije, v: Državni zbor Republike Slovenije 1992-2002 (ur. Jožica Velišček e tal.), Ljubljana, page 94

6 Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, pages 131-135.

Dvodomni parlament so urejale tudi nekatere ustave Jugoslavije (npr. jugoslovanska Ustava iz leta 1946 v obdobju po drugi svetovni vojni) in slovenske republiške ureditve (Ustavni zakon iz leta 1953, Ustava iz leta 1963). Tako sta Jugoslavija in Slovenija kot njena federalna enota imeli izkušnje ne samo z dvodomnostjo, ampak tudi z večdomnostjo predstavniškega telesa. Jugoslovanska Ustava iz leta 1963 je namreč določala celo petdomno⁷ skupščinsko telo z ustavnim modelom delegatskega sistema, Ustava Socialistične republike Slovenije iz leta 1963 pa tridomno skupščinsko telo.⁸

2.2. Osamosvojitve in obdobje po osamosvojitvi Slovenije

Ideja o dvodomnosti slovenskega parlamenta je nastala v času oblikovanja osnutka slovenske ustave konec osemdesetih let dvajsetega stoletja. Prvi osnutek ustave je določal enodomno predstavniško telo in poseben zakonodajni postopek v primeru odločanja o lokalnih interesih. Drugi dve različici osnutka Ustave pa sta predvidevali ustanovitev dvodomnega parlamenta. Prva različica z ustanovitvijo zbora republik, ki bi bil enakopraven Državnemu zboru, in druga različica z ustanovitvijo šibkejšega Državnega sveta.⁹

Kasneje, v fazi sprejemanja Ustave, so se prav tako pojavljali različni predlogi, o tem kakšno naj bo slovensko predstavniško telo. Eden izmed teh predlogov je vseboval idejo o enodomnem predstavniškem telesu, pri čemer bi del enodomnega telesa predstavljal lokalne in regionalne

Later on, numerous Yugoslav constitutions (e.g. 1946 Yugoslav Constitution) and Slovenian republic acts (e.g. 1953 Constitution act, 1963 Constitution) have adopted the bicameral parliament. As said before, Yugoslavia and Slovenia as its federal unit had experienced not only a bicameral system, but even a multi chamber system. The 1963 Yugoslav Constitution established a five chamber Assembly body⁷ which was a constitutional model of a delegate system. In the same year, the Socialist Republic of Slovenia established a three chamber Assembly body.⁸

2.2. Independence and the period after the independence of Slovenia

The idea of a bicameral Slovenian parliament emerged in the late 1980s when the draft for the Slovenian Constitution was created. The first draft anticipated a unicameral parliament that would include Members of Parliament representing regional interests in a special legislative procedure. Later on, two ideas of a bicameral parliament arose. The first anticipated a foundation of the Assembly of Republics which would be equal to the National Assembly. The second anticipated the foundation of a “weaker” National Council.⁹

Later on, when Slovenian Constitution was in phase of adoption, different suggestions about the Slovenian representative body arose. One of them involved an idea

7 Zvezna skupščina je bila po Ustavi iz leta 1963 sestavljena iz Zveznega zbora, Gospodarskega zbora, Socialno-zdravstvenega zbora, Kulturno-prosvetnega zbora in Organizacijsko-političnega zbora.

8 Skupščina SFR Slovenije je bila po republiški ustavi iz leta 1974 sestavljena iz Družbeno-političnega zbora, Zbora združenega dela in Zbora občin. Več o tem gl. Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, str. 135-154.

9 Več o tem gl. Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, str. 154-160.

7 1963 Constitution determined that the Federal Parliament was composed of Federal Commerce Assembly, Social-Health Assembly, Cultural-Educational Assembly and Organizational-Political Assembly.

8 1974 Republic Constitution determined, that the SFR Assembly of Slovenia was composed of Social-Political Assembly, Assembly of Reconciled Work and Municipality

See also- Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, pages 135-154.

9 More on that- Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, str. 154-160.



interese. Predstavniki regionalnih in lokalnih interesov bi bili izvoljeni na drugačen način od ostalih predstavnikov omenjenega telesa. V tem primeru bi šlo torej za korekcijo volilnega sistema le za tisti del parlamenta, ki bi predstavljal lokalne in regionalne interese¹⁰. Drugi predlog, podan v času sprejemanja Ustave, je vseboval idejo o drugem domu, ki naj bi v parlamentarno odločanje vnesel drugačne poglede in predstavljal delodajalce in delojemalce, predstavništvo pokrajin, profesionalne sloje ipd.¹¹ V tem primeru govorimo o ideji ustanovitve drugega doma po vzoru bavarskega Senata. Tretji predlog pa je vseboval idejo o zboru pokrajin kot »pol-domu«, ki bi se po vzoru norveškega modela¹² pri obravnavi nekaterih vprašanj izločil v poseben pokrajinski zbor pri obravnavi nekaterih vprašanj.¹³ Obstajali pa so tudi predlogi, po katerih bi dvodomni sistem v Sloveniji uvedli na podlagi izkušenj nekaterih drugih domov v tujini, npr. Franciji, Španiji in Italiji¹⁴.

V Ustavo je bila na koncu zapisana rešitev, ki določa dve pristojni instituciji na zakonodajnem področju, pri čemer ima Državni svet zgolj, iniciativno, svetovalno ter odločilno funkcijo. Ta ustavna ureditev se je razlikovala od variantne verzije dvodomnosti vsebovane v osnutku Ustave, saj jo je ustavodajalec tekom postopka za sprejem Ustave nenehno popravljal.¹⁵ Zgledovala se je sicer po

of a unicameral representative body which would represent local and regional interests. These representatives would have been voted in a different way than other members of the representative body. This would serve as a mean of correction of the electoral system only for the part of the parliament that would represent local and regional interests.¹⁰ The second suggestion included an idea of a second chamber which would represent employers and employees, regions and professionals, and which would induce varying approaches to the parliamentary decision making.¹¹ This idea was based on the Bavarian Senate. The third idea was an Assembly of Regions as a “half-chamber” based on the Norwegian model¹², which would discuss certain issues separately¹³. There also existed other different ideas, which envisaged that Slovenia would adopt a bicameral system based on the experience of some of the upper chambers internationally e.g. France, Spain and Italy.¹⁴

Finally, the Constitution determined that two institutions would have the legislative authority. However, the National Council only has the initiative, and the advisory and suspensive function. This constitutional regulation was different than the bicameral version in the draft of the Constitution, because its quality was constantly being improved¹⁵. The Constitution copied the Bavarian system

10 A. Igličar, Slovenski parlament kot zakonodajalec, Teorija in praksa št. 3-4/1991, s. 332.

11 F. Bučar, Preoblikovanje slovenskega državnega zbora, Teorija in praksa št. 5-6/1991, sl. 673.

12 Norveška je imela od leta 1814 do leta 2009 urejeno modificirano enodomnost norveškega parlamenta. Norveški parlament (Storting) se po svoji izvolitvi razdeli na dva dela, Odelsting in Lagting. Slednji je opravljal vlogo drugega doma in opozarjal na napake »prvega doma«.

13 Kaučič, Igor, 1991: Teritorialno predstavništvo v novem slovenskem parlamentu, Teorija in praksa št. 5-6/1991, s. 679 in I. Kristan, Ustavno sodišče in parlament, Zbornik znanstvenih razprav, Ljubljana, s. 7.

14 Grad, Franc, 1991: Nekateri vidiki položaja drugega doma predstavniškega telesa, Zbornik znanstvenih razprav, Ljubljana, s. 676.

15 Več o tem gl. Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, str. 160-164.

10 A. Igličar, Slovenski parlament kot zakonodajalec, Teorija in praksa nr. 3-4/1991, s. 332.

11 F. Bučar, Preoblikovanje slovenskega državnega zbora, Teorija in praksa nr. 5-6/1991, sl. 673

12 From 1814 to 2009, Norway had a modified unicameral parliament. The Norwegian parliament (Storting) divided into two parts after its election, Odelsting and Lagting. The latter was the upper chamber and was constantly supervising the work of the lower chamber.

13 I. Kaučič, Teritorialno predstavništvo v novem slovenskem parlamentu, Teorija in praksa nr. 5-6/1991, s. 679 in I. Kristan, Ustavno sodišče in parlament, Zbornik znanstvenih razprav, Ljubljana 1991, s. 7.

14 Grad, Franc, 1991: Nekateri vidiki položaja drugega doma predstavniškega telesa, Zbornik znanstvenih razprav, Ljubljana, s. 676.

15 More on that- gl. Senčur, Miloš, 2010: Dvodomnost slovenskega parlamenta, Doktorska disertacija, Pravna fakulteta, Univerza v Ljubljani, Ljubljana, str. 160-164.

ureditvi dvodomnosti na Bavarskem z dodatno interesno sestavo, ki naj bi zajemala predstavništvo interesne organiziranosti, slednje pa v času sprejemanja Ustave večinoma še ni bilo vzpostavljene. Logična posledica je bila zelo skopa in nedorečena ustavna ureditev dvodomne parlamentarne ureditve, predvsem ureditve Državnega sveta.

Glede na zgodovino dvodomnosti v Sloveniji in v državah, katerih del je bilo slovensko ozemlje v preteklosti, lahko vidimo, da je Državni svet povsem nova institucija, ki je nastala z Ustavo v letu 1991. Državni svet ni naslednik institucije, ki je že obstajala v preteklosti, zato v letu 2017 praznuje šele 25 let. Nekateri drugi domovi v Evropi, ki so sicer nastali v istem zgodovinskem obdobju kot Državni svet pa imajo korenine v daljni preteklosti in predstavljajo naslednike nekaterih institucij. Takšen primer predstavlja češki Senat, ki ima svoje korenine že v demokratični Češkoslovaški med obema svetovnima vojnoma.¹⁶ Podobno kot Češkoslovaška je sicer imela pred drugo svetovno vojno Senat tudi Kraljevina Jugoslavija, vendar Državni svet nikakor ni naslednik omenjenega Senata iz časa Kraljevine Jugoslavije, saj je zasnovan povsem drugače in v drugačnih zgodovinskih okoliščinah. Prav tako pri oblikovanju in ureditvi Državnega sveta ni bila uporabna tradicija delegatske republiške Skupščine iz leta 1974, saj se je povsem razlikovala od sodobnih parlamentov.

3. STATUS IN VLOGA DRŽAVNEGA SVETA V SLOVENSKEM USTAVNEM SISTEMU

Tuje ustave ponavadi določajo, da je predstavniško telo sestavljeno iz dveh domov, kar onemogoča vprašljivost statusa drugih domov. Drugačno prakso poznajo praviloma

¹⁶ The Czech Senate, History and Presence, Senate of the Parliament of the Czech Republic, Prague 2003, str. 51-56.

of bicameralism with an additional interest representative structure which would include the delegation of organization of interests, still not established at the time. The logical consequence was a barely sufficient and vague constitutional regulation of the bicameral parliamentary system, especially the regulation of the National Council.

Based on the history of bicameralism in Slovenia and all previous countries Slovenian people were a part of, we see that the National Council is a completely new institution which was first introduced with the Slovenian Constitution in 1991. It is not a successor of any other institution from the past, which is why only the 25th anniversary of the National Council is celebrated in 2017. Throughout Europe, numerous upper chambers were founded in the same period but have roots in the distant past and represent the successors of some previous institutions. The Czech Senate for example, originates from the period between both world wars in democratic Czechoslovakia¹⁶. Similar to Czechoslovakia, the Kingdom of Yugoslavia also had a Senate just before World War 2, but it cannot be compared to the modern National Council, since it was designed differently and was shaped in distinct historical circumstances. Additionally, the tradition of the 1974 Delegate Republic Assembly did not contribute to the foundation and regulation of the National Council, since it strongly differed from all modern parliaments.

3. THE STATUS AND ROLE OF THE NATIONAL COUNCIL IN THE SLOVENIAN CONSTITUTIONAL SYSTEM

Foreign constitutions usually specify the bicameral parliamentary structure, which prevents the questionability of the upper chambers status. Different practice is known

¹⁶ The Czech Senate, History and Presence, Senate of the Parliament of the Czech Republic, Prague 2003, str. 51-56

le v ustavah držav, kjer dvodomnost ni neposredno urejena v Ustavi. Takšna je na primer nemška in slovenska ustavna ureditev, kjer najvišja pravna akta ne določata, da je predstavniško telo sestavljeno iz dveh domov, temveč zgolj urejata obe instituciji in določata njuna medsebojna razmerja. Glede na to, da je treba šteti za drugi dom zakonodajnega telesa vsak organ, ki ima pomemben vpliv na izvajanje zakonodajne funkcije, ker je lahko končna odločitev v določeni meri tudi posledica njegove odločevalske vloge, veljata tako nemški Zvezni svet in slovenski Državni svet za druga domova parlamenta.¹⁷ V Nemčiji zaradi močnih pristojnosti nemškega Zveznega sveta in njegovega predstavništva nemških tederalnih enot - dežel, ni dvoma o dvodomnosti nemškega zveznega predstavniškega telesa. Tudi v Sloveniji je Državni svet, ne glede na skopo ureditev, drugi dom parlamenta. V primeru ustavne podnormiranosti drugega doma (npr. Državnega sveta) je njegov status odvisen predvsem od njegove vloge v zakonodajnem postopku, njegovih pristojnostih in položaja v ustavi. Po ustavnopravni teoriji se namreč šteje za dvodomno vsaka ureditev, v kateri delujeta na področju zakonodajne funkcije dva organa, ne glede na to, kakšno je razmerje med njima.¹⁸

Ob nastanku Državnega sveta so obstajala različna mnenja o statusu in vlogi Državnega sveta v slovenskem ustavnem sistemu. V prvih letih po nastanku Državnega sveta je bilo ozračje, v katerem je deloval Državni svet, pogosto neprijazno. Odnos Državnega zbora do Državnega sveta pa je bil podcenjevalen.¹⁹ V Državnem zboru so ob nastanku obeh institucij, nasprotovali stališču, da je slovensko predstavniško telo dvodomno in da je Državni svet drugi

only in constitutions of states, whose Constitutions do not directly regulate the bicameral. This occurred also in the Slovenian and German constitutional regulation where both supreme acts do not directly specify the bicameral system. Both regulations merely define the authorities of both chambers and regulate mutual relationship. Since both the German Federal Council and the Slovenian National Council can affect the final decision and therefore have an important influence on the execution of the legislative function, they are both considered as the parliament's upper chamber.¹⁷ Because of the strong authority of the German Federal Council and the representations of German federal units, there is no doubt about the existence of the bicameral system in Germany. Even though Slovenia has a barely sufficient regulation of the National Council, it nonetheless represents the parliament's upper chamber. The status of the upper chamber is strongly dependent on the regulation of its jurisdictions and authorities, in the case of poor regulation in the Constitution. Whenever there are two active institutions in the legislative procedure, the constitutional theory identifies the system as bicameral, independently of the relation between them.¹⁸

When the National Council was formed there were many different opinions on its role in the Slovenian constitutional system. In the first years of its existence, the National Council frequently worked not only in a hostile atmosphere, but also had to endure a degrading attitude of the National Assembly.¹⁹ As both institutions were formed, the National Assembly clearly refused to acknowledge the National Council as the upper chamber of the Slovenian parliament. They mostly referred to the fact that not only

17 Podrobneje o tem gl. Grad, Franc, 1998: Dvodomnost in zastopnost regionalnih interesov, v zborniku: Regionalizem v Sloveniji, ČZ Uradni list RS, Ljubljana, str. 162.

18 Grad, Franc, 2000: Parlament in vlada, Uradni list Republike Slovenije, Ljubljana, str. 141 in 251.

19 Kristan, Ivan, 1996: Dvodomnost slovenskega parlamenta, Pravniki, št. 9-10/1996, str. 453.

17 See also gl. Grad, F.: Dvodomnost in zastopnost regionalnih interesov, v zborniku: Regionalizem v Sloveniji, ČZ Uradni list RS, Ljubljana, 1998, page 162.

18 Grad, F.: Parlament in vlada, Uradni list Republike Slovenije, Ljubljana, 2000, pages 141 in 251.

19 Kristan, I.: Dvodomnost slovenskega parlamenta, Pravniki, nr. 9-10/1996, page 453.

dom slovenskega parlamenta. Slovenska Ustava namreč ne določa izrecno, da je Državni svet drugi dom slovenskega parlamenta, še več, Ustava ne vsebuje niti izraza »parlament«. Ravno zato so posebej pomembne pristojnosti, ki so bile podeljene Državnemu svetu. Podobne pristojnosti kot jih ima Državni svet, imajo namreč tudi drugi domovi dvodomnih parlamentov v Evropi in svetu (zakonodajna iniciativa, suspenzivni veto). Zagotovo je pomemben tudi položaj Državnega sveta v Ustavi, saj je uvrščen za Državnim zborom in pred Vlado ter Predsednikom republike, torej na mesto, ki je namenjeno zakonodajni veji oblasti.

Na podlagi navedenega, se je v pravni teoriji oblikovalo večinsko mnenje, da je Državni svet drugi dom slovenskega parlamenta²⁰ in da spada v zakonodajno vejo oblasti. Da je Slovenija z Ustavo iz leta 1991 uvedla nesimetrični²¹ dvodomni sistem pa je zapisalo tudi Ustavno sodišče,²² zaradi česar lahko sedaj nesporno trdimo, da imamo v Sloveniji dvodomni parlamentarni sistem.

4. PRAVNA UREDITEV POLOŽAJA DRŽAVNEGA SVETA

Slovenska Ustava ni povsem uravnotežena, saj so nekateri deli državne ureditve urejeni manj podrobno kot drugi.

20 Ribičič, Ciril, 2000: Dvodomnost, v: VII. dnevi javnega prava, Portorož, 2001, str. 135; Grad, F.: Parlament in vlada, ČZ Uradni list RS, Ljubljana, str. 141 in 142; Tako definicijo podaja tudi Leksikon pravo (Mladinska knjiga, Ljubljana, 2003, str. 75).

21 V slovenski teoriji je najti tudi izraz nepopolna dvodomnost, ki izhaja predvsem iz italijanske in francoske ustavne teorije (bicameralismo perfetto, bicamérisme parfait). Izraz »nepopolna« dvodomnost je zelo neposrečen, saj po pomenu izraza daje napačen vtis, da dvodomnosti nekaj manjka, da ni izpeljana do popolnosti in da je pomanjkljivo urejena, kar ni res. Nasprotno pa izraz nesimetrična dvodomnost (asymmetrical bicameralism), ki se pojavlja v anglosaksonski pravni teoriji, ne povzroča zmede v razumevanju kot nepopolna dvodomnost. Zato bo v nadaljevanju uporabljen izraz nesimetrična dvodomnost.

22 Gl. odločbo US, št. U-I-295/07, z dne 22. 10. 2008.

does the Constitution fail to explicitly identify the National Council as the upper chamber of the parliament, but also that it does not mention a “parliament” in our constitutional system. The role of the National Council as the second chamber can be seen from all the jurisdictions the National Council has been given, since most other upper chambers in other parliaments in Europe and the world have the same jurisdictions as the Slovenian (suspensive veto, legislative initiative). The National Council is in our Constitution systematically placed right after the National Assembly and before the Government and the President of the Republic, giving another sign of intended classification of the National Council as a legislative body.

Eventually, the majority of the legal theory formed an agreement that the National Council is the upper chamber²⁰ of Slovenian parliament and belongs to the legislative branch. In 1991 the Constitutional Court confirmed the legal theory opinion and that Slovenia introduced an asymmetrical²¹ bicameral system²².

4. LEGAL REGULATION OF THE NATIONAL COUNCIL'S POSITION

The Slovenian Constitution is not completely balanced, since some institutions are regulated less thoroughly than

20 Ribičič, C.: Dvodomnost, v: VII. dnevi javnega prava, Portorož, 2001, page. 135; Grad, F.: Parlament in vlada, Official Gazette, Ljubljana, 2000, page 141 and 142; The same definition was made by Leksikon pravo (Mladinska knjiga, Ljubljana, 2003, page 75).

21 Imperfect bicameralism is a common term in Slovenian theory and it originates from Italian and French Constitutional theory (bicameralismo perfetto, bicamérisme parfait). The term itself is poor and gives the impression that something is missing in the bicameralism, which is not true. On the other hand, asymmetrical bicameralism does not create confusion like imperfect bicameralism does. That is why hereinafter the term asymmetrical bicameralism will be used.

22 See also Decision of the Constitutional Court, nr. U-I-295/07, 22. 10. 2008



To velja zlasti za Državni svet, ki je urejen manj podrobno kot drugi državni organi, še posebej če njegovo ureditev primerjamo z ureditvijo Državnega zbora. Ustavodajalec je v Ustavi lapidarno uredil ne samo postopke v zvezi z Državnim svetom, kot na primer postopek ponovnega odločanja, ampak tudi zakonodajni postopek v celoti.²³ Ker slovenska Ustava ureja vprašanja v zvezi s predstavniškim telesom, še posebej v zvezi z Državnim svetom, dokaj skopo, ponekod pa celo pomanjkljivo, so bila v urejanje zakonodajalcu prepuščena nekatera pomembna vprašanja, ki po svoji naravi sodijo v okvir ustavne stvarine.

V Ustavi je določeno, da organizacijo Državnega sveta uredi poseben zakon, zato je bil leta 1992 sprejet Zakon o Državnem svetu, ki je zaradi ustavne podnormiranosti omenjenega področja uredil tudi mnoga vprašanja, ki bi jih morala urejati Ustava. Posledica omenjenih ustavnih praznin je, da Zakon o Državnem svetu ureja vprašanja, ki bi po materiji sodila bolj v Ustavo kot v zakon. Zakonsko urejanje sicer daje zakonodajalcu možnost, da ureditev prilagaja spremenjenim okoliščinam, vendar sočasno slabi ustavni položaj parlamenta. Ustava namreč zagotavlja najvišje pravne garancije, prepustitev ureditve tako pomembnega vprašanja zakonu pa dopušča trenutni parlamentarni večini prevelike možnosti posega v položaj parlamenta, zlasti drugega doma. Obenem je treba poudariti, da je Zakon o Državnem svetu, ki ureja tudi volitve v Državni svet, težko spremeniti, saj je bil kot volilni zakon sprejet z enako večino

23 Ustava v 88. členu določa le načelo več-faznosti zakonodajnega postopka, vendar je še ta prepuščena odločitvi Državnega zbora. Ustava določa visoko stopnjo avtonomije Državnemu zboru pri sprejemanju zakonov, saj lahko le-ta s Poslovnikom tudi odstopi od načela več-faznosti zakonodajnega postopka. Ustava pa ne določa nobenega merila za takšno odločitev Državnega zbora. Ustava dejansko določa le quorum in minimalno večino za sprejemanje zakonov, upravičence za vložitev predloga zakona ter obvezno razglasitev in objavo sprejetega zakona, vse ostalo je prepuščeno ureditvi v Poslovniku Državnega zbora, ki ga mora Državni zbor sprejeti z dvotretjinsko večino navzočih poslancev. Več o tem gl. F. Grad, Parlamentarno pravo, str. 236.

others. This applies to the National Council which is fairly regulated compared to other institutions, especially the National Assembly. The Constitution is very concise, not only when it comes to regulation of procedures in which the National Council is active, such as the reconsideration of an act procedure, but also concerning the whole legislative procedure.²³ A lot of important decisions that should have been a part of the constitutional regulation have been transferred to the legislator, especially due to poor regulation of the parliament in the Constitution, especially the National Council.

The National Council Act was adopted in 1992 due to barely sufficient regulation of the otherwise constitutional matter in the Constitution. The consequence of the constitutional vacuum is that the National Council Act regulates constitutional instead of legislative matters. This enables a faster way of adaptation to current social conditions, but simultaneously weakens the constitutional position of the parliament. The Constitution offers the highest legal guarantees, but the cession of such an important decision making jurisdiction enables too much interference with the parliament's position, especially upper chambers. At the same time, we have to stress that the National Council Act, which also regulates National Councils elections, is extremely difficult to modify. As an election act, it was adopted with the same majority as the Constitution – absolute two-third majority. The

23 88th article of the Constitution determines the principle of multi-phase legislative procedure. Still this decision is left to the National Assembly. The Constitution enables the National Assembly a high level of autonomy when adopting acts, because with its Act of Procedure, it can decline from the multi-phase legislative procedure principle. However, the Constitution does not establish any criteria for this National Assembly decision. It only determines the quorum and minimum majority to adopt laws, beneficiaries to propose an act and mandatory declaration of the adopted act. Everything else is left to the regulation in the National Assembly Act of Procedure, which is adopted by the National Assembly with 2/3rd relative majority. See also F. Grad, Parlamentarno pravo, page 236

kot Ustava, tj. z absolutno dvotretjinsko večino. Zakon o Državnem svetu je sprejela Skupščina Republike Slovenije v letu 1992, še pred začetkom delovanja Državnega sveta, zaradi česar je bilo nemogoče predvideti vse okoliščine in posebnosti njegove organizacije in delovanja. Ravno zato je zakon v marsikaterem delu zastarel in bi ga bilo treba ustrezno prilagoditi sedanjim razmeram, zlasti v delu, ki ureja razmerja med Državnim zborom in Državnim svetom, saj so se ta v času njunega delovanja spremenila.

Razmerje med obema organoma je seveda vrhunska ustavna materija, zato bi moralo biti urejeno v Ustavi ali vsaj v zakonu, v poslovniku Državnega zbora pa samo toliko, kolikor se tiče njegovega poslovanja v zvezi s tem.²⁴ V Zakonu o Državnem svetu so urejeni le nekateri vidiki razmerij med obema domovoma, saj je Zakon o Državnem svetu področni zakon, ki prvenstveno ureja volitve v Državni svet in njegovo ureditev.

Ker je zakonska ureditev Državnega sveta prav tako pomanjkljiva, morata številna vprašanja urejati poslovnik obeh domov. Tako na podlagi Ustave in Zakona o Državnem svetu določa organizacijo in način delovanja Državnega sveta Poslovnik Državnega sveta, medtem ko razmerja med Državnim zborom in Državnim svetom ureja Poslovnik Državnega zbora. Glede na trenutno pomanjkljivo ustavno in zakonsko ureditev je omenjena materija podrobneje urejena v poslovniki obeh domov, posebno v Poslovniku Državnega zbora. Oba poslovnik sta po temeljni naravi akta, ki urejata notranje delovanje obeh domov, pri čemer je problematično to, da posamezna vprašanja razmerij med njima, kot je npr. zakonodajni postopek in postopek ponovnega odločanja, ureja poslovnik enega izmed njiju (Poslovnik Državnega zbora), ne da bi imel drugi organ na njegovo vsebino kakršenkoli vpliv.²⁵

²⁴ Tako F. Grad, Franc, 2000: Parlamentarno pravo, str. 24–25.

²⁵ Tako Grad, Franc, 2013: Parlamentarno pravo, GV Založba, Ljubljana, str. 166–167.

National Council Act was adopted by the Assembly of the Republic of Slovenia in 1992, prior to any activity of the National Council, hence it was impossible to predict all circumstances and peculiarities of its organization and activities. That is why the act is in many ways out-of-date and should be adjusted to the current situation, especially regulation of the relation between both chambers of the parliament, which has changed greatly with time.

The chambers' relationship is the ultimate constitutional matter and should be regulated in the Constitution or at least in an act, whereas in the National Council's act of procedure it should be regulated only as much as it regards its activity.²⁴ The National Council Act regulates only a few aspects of the chambers relation, because it is a law that primarily regulates elections in the National Council and its organization.

Because of the poor National Council legislative regulation, many important matters are regulated in rules of procedure of both chambers. The Act of Procedure of the National Council based on the Constitution and the Rules of the Procedure of the National Council regulate the organization and jurisdictions of the National Council, whereas the Rules of Procedure of National Assembly of Slovenia regulate the relations between both chambers. By nature, both regulate organization of the chambers. The problem is that they regulate relations between the chambers such as the legislative procedure and procedure of the reconsideration of a law like the National Assembly of Slovenia Rules of Procedure does (e.g. legislative procedure and reconsideration procedure) without any influence of the other chamber.²⁵

Considering that chamber relations are not adequately regulated on the constitutional level, a special act on regulating the relations would be necessary. The act should

²⁴ F. Grad, Parlamentarno pravo, str. 24–25.

²⁵ F. Grad, Parlamentarno pravo, str. 166–167.

Glede na to, da razmerja med domovoma niso ustrezno urejena na ustavni ravni, bi bilo treba sprejeti poseben zakon o ureditvi razmerij med obema domovoma. V predlaganem zakonu bi bilo treba celovito urediti odnose med obema domovoma in poslovniški ureditvi prepustiti samo podrobno ureditev zakonodajnega postopka ter odnosov med ustavnimi organi v zakonodajnih in drugih postopkih, ki jih vodi Državni zbor.

5. INTERESNA SESTAVA DRŽAVNEGA SVETA

V Sloveniji sta oba domova parlamenta različna, ne samo v načinu oblikovanja, pristojnostih, mandatu in poklicnosti opravljanja funkcije njunih članov, ampak tudi po sestavi. Državni zbor predstavlja vse državljane Republike Slovenije, v Državnem svetu pa so zastopani različni družbeni interesi. Lokalni in funkcionalni interesi se v Državnem svetu medsebojno soočajo na institucionaliziran način. Njegova sestava naj bi nevtralizirala prevelik vpliv političnih strank, ki predvsem v Državnem zboru sodelujejo v zakonodajnem postopku.

Okvire sestave Državnega sveta določa že Ustava, saj je po Ustavi zastopstvo nosilcev socialnih, gospodarskih, poklicnih in lokalnih interesov.²⁶ Sestavlja ga 40 članov, ki v grobem zastopajo funkcionalne in lokalne interese. Večino članov predstavlja 22 predstavnikov lokalnih interesov, zaradi česar štejeemo Državni svet kot določeno obliko institucionalizirane regionalizacije. Predstavnikov funkcionalnih interesov, interesov „gospodarstva in negotdarstva“, je le 18: štirje predstavniki delodajalcev, štirje predstavniki delojemalcev, štirje predstavniki kmetov, obrtnikov in samostojnih poklicev ter šest predstavnikov negospodarskih dejavnosti. Ob sprejemanju Zakona

.....
26 Ustava Republike Slovenije, 96. člen

entirely cover chamber relations, whereas the rules of procedures should thoroughly regulate the legislative procedure and the relations between all constitutional institutions and the National Assembly in legislative and other procedures that are managed by it.

5. INTEREST STRUCTURE OF THE NATIONAL COUNCIL

The two Slovenian chambers have many differences, not only in the way they are formed, their jurisdictions, mandate and professionalism of the members, but also in their structure. The National Assembly is a representative of all Slovenian citizens, whereas the National Council represents different social interests such as local and functional interests that are in this way mutually confronted in an institutionalized manner. The main purpose of its structure is to neutralize the influence of political parties that participate as part of the National Assembly in legislative procedure.

The Constitution determines the foundation of the National Council's structure by defining the National Council as a representative body of economic, professional and local interests.²⁶ It consists of 40 members that roughly represent local and functional interests. 22 representatives of local interests present the majority of members which is why the National Council is considered to be a form of institutionalized regionalization. There are 18 functional, economic and non-economic interest representatives: 4 representatives of employers, 4 representatives of employees, 4 representatives of farmers, crafts and trades, and 6 representatives of non-commerce activities. Many suggestions were made on who should

.....
26 Constitution of the Republic of Slovenia, 96th article





o Državnem svetu²⁷ v Skupščini v letu 1992 so se pojavljali številni predlogi, kdo vse naj ima predstavnika v Državnem svetu. Predlogi so obsegali tako ideje, da se dva sedeža v Državnem svetu namenita izvoljenima predstavnikoma Slovencev v svetu, kot tudi, da lahko pri volitvah predstavnikov delodajalcev in delojemalcev sodelujejo upokojenška in invalidska združenja.²⁸ Vendar navedenih različnih vrst predstavnikov ni bilo mogoče urediti v Zakonu o Državnem svetu, saj tega ne omogoča ureditev sestave Državnega sveta, ki je določena v Ustavi.

Kot navedeno, je bila sestava Državnega sveta določena že v Ustavi in je bila v času sprejemanja Ustave plod kompromisa med različnimi idejami o tem, kakšen drugi dom naj se ustanovi. Če naj bi bile interesne skupine predstavljene v posebnem telesu, bi morala biti tudi družba ustrezno strukturirana. Tega pa v 90-ih letih prejšnjega stoletja še ni bilo, kajti v prehodnem obdobju, v katerem je bila sprejeta Ustava, prejšnjih institucionalnih oblik organiziranja posebnih družbenih interesov ni bilo več, nove pa še niso bile vzpostavljene. Tako stanje je zato povzročalo obilo težav pri oblikovanju in volitvah Državnega sveta konec leta 1992. Na drugi strani pa se je prav organiziranost posebnih družbenih interesov od sprejema Zakona o Državnem svetu spremenila v tolikšni meri, da vzpostavljena razmerja med njimi in znotraj njih ponekod ne ustrezajo več, zaradi česar bi bilo treba zakonsko in morebiti celo ustavno ureditev volitev v Državni svet prilagoditi spremenjenim razmeram.

Predstavništvo interesnih skupin v Državnem svetu je bilo problematično že v času sprejema Ustave. Predvidene institucionalne oblike organiziranja posebnih družbenih

27 Zakon o Državnem svetu (ZDSve), Uradni list RS, št. 100/2005-UPB1 in 95/2009-Odl.US: U-I-248/o8.

28 Predlog za izdajo zakona o državnem svetu z osnutkom zakona - ESA 568, Poročevalec Državnega zbora Republike Slovenije, št. 10/92; Predlog zakona o državnem svetu - ESA 568, Poročevalec Državnega zbora Republike Slovenije, št. 13/92.

be represented in the National Council when the National Council Act was being adopted²⁷ by the National Assembly in 1992. Some ideas suggested that 2 seats in the National Council should represent Slovenian people abroad, as well as that retirement and disability associations could participate in elections of employer and employee representatives.²⁸ Such kinds of representatives were in the end not regulated in the National Council Act since the Slovenian constitutional regulation of structure of the National Council does not support it.

As previously mentioned, the structure of the National Council is a result of a compromise between different ideas about the kind of an upper chamber that the Slovenian Constitution should have. The idea of interest groups in a special representative body would work only in a properly structured society. This was not the case in the 1990s, because the Slovenian Constitution was adopted in a transitional period when the last institutional forms of organizing special social interests were abolished and when new were not yet established. This caused a lot of problems in 1992, when the first elections in the National Council took place. On the other hand, the organization of special social interests has changed greatly since the National Council Act was adopted. The established relations between and within social interests are not appropriate anymore. This is why the legislative or perhaps even constitutional regulation of the National Council's elections should be changed and adapted to current circumstances.

Interest group representation in the National Council was already problematic when the Constitution was

27 National Council Act (ZDSve), Official Gazette RS, nr. 100/2005-UPB1 and 95/2009- decision of the Constitutional Court: U-I-248/o8.

28 Proposal on the National Council Act with the draft on the Act - ESA 568, Rapporteur of the National Assembly of the Republic of Slovenia, nr. 10/92; National Council Act proposal - ESA 568, Rapporteur of the National Assembly of the Republic of Slovenia, nr. 13/92.

interesov se po sprejemu Ustave niso vzpostavile v celoti, zaradi česar se zamisel ustavodajalca in zakonodajalca o vzpostavitvi zbornic različnih interesnih skupin ni uresničila.²⁹ Prav organiziranost posebnih družbenih interesov se je od sprejema Zakona o Državnem svetu v tolikšni meri spremenila, da vzpostavljena razmerja med njimi in znotraj njih ponekod ne ustrezajo več, zaradi česar bi bilo treba zakonsko ureditev volitev prilagoditi spremenjenim razmeram. Vendar je tisto, kar se glede sestave interesnega zastopstva Državnega sveta lahko spremeni z zakonom le razmerje med štirimi predstavniki kmetov, obrtnikov in samostojnih poklicev in šestimi predstavniki negospodarskih dejavnosti, saj je ostala sestava Državnega sveta natančno določena z Ustavo. Zakon je namreč uredil, da imajo kmeti dva predstavnika, obrtniki in samostojni poklici pa po enega. Poleg tega je določil tudi, katera področja negospodarstva bodo zastopana med šestimi predstavniki negospodarske dejavnosti, kjer prevladujejo izobraževalne in raziskovalne dejavnosti, ki imajo kar tri predstavnike. Preostala tri predstavništva so se porazdelila med zdravstvo, socialno varnost ter kulturo in šport.

6. VOLITVE V DRŽAVNI SVET

Oblikovanje drugega doma je tipična ustavna materija, saj Ustava ureja temelje državne ureditve. Ustave držav z dvodomnim parlamentarnim sistemom določajo vsaj način oblikovanja drugega doma, lahko pa urejajo tudi podrobnejše zadeve glede oblikovanja (npr. način volitev in volilni sistem v primeru volitev drugega doma). Še francoska Ustava, ki je ena izmed najkrajših ustav na svetu,

29 Nastale so npr. gospodarska zbornica, obrtna zbornica, kmetijsko-gozdarska zbornica, odvetniška zbornica ipd. Ni pa nikoli nastala zbornica samostojnih poklicev, zbornica raziskovalne dejavnosti, športna in kulturna zbornica ipd.

adopted. The idea to establish chambers for different interest groups was not executed²⁹, because the predicted institutionalized forms of organizing special social interests were not established until after the Constitution was adopted. Since the relations between different social interests have changed greatly, new legislation is necessary to keep track with the current situation. The problem is that the only thing that can be changed with an act in the interest structure of the National Council are the relations between 4 representatives of farmers, crafts and trades and 6 representatives of non-commercial activities, because the remaining structure of the National Council is strictly defined by the Constitution. The National Council Act instructs that farmers have 2 representatives whereas crafts and trades have one each. It is also instructed which fields of non-commercial activities are represented among 6 representatives. Science and education prevail in these terms since they have 3 representatives among 6. Other 3 representatives represent health care, social security, culture and sport.

6. ELECTIONS TO THE NATIONAL COUNCIL

Since the Constitution typically regulates foundations of national organizations, the establishment of the upper chamber is a constitutional matter. Constitutions with the bicameral parliament system usually determine at least the way how the upper chamber is formed, and can sometimes specify in greater detail about the establishment (e.g. elections and electoral system when elections to the other chamber are taking place). Even the French

29 New chambers were founded e.g. Chamber of Commerce, Chamber of Crafts, Agricultural-Forestry Chamber, Bar Association etc. A chamber of professional occupations, science, sport and culture were never established.

saj vsebuje zgolj 89 členov³⁰, v 24. členu določa, da je Senat voljen posredno ter da morajo biti v Senatu zastopani lokalni interesi in francoski državljani, ki živijo v tujini.

Posebnost na tem področju predstavlja ustavna ureditev oblikovanja Državnega sveta Republike Slovenije. Ta glede načina oblikovanja Državnega sveta določa samo, da se Državni svet oblikuje z volitvami. Glede načina volitev v Državni svet pa Ustava ne ureja ničesar, razen da način volitev v Državni svet prenaša na zakonsko raven, saj določa, da volitve v Državni svet ureja zakon, ki ga sprejme Državni zbor z absolutno dvotretjinsko večino. Ustava ne določa niti temeljnih pravil glede volitev, torej načina, ali so volitve posredne ali neposredne. Vendar pa je mogoče iz ustavne ureditve pristojnosti in sestave Državnega sveta sklepati, da so bolj ustrezne posredne kot neposredne volitve, saj posredne volitve omogočajo tesnejšo povezanost med člani interesnih skupin in njihovimi predstavniki.³¹ Vendar obenem zagotavljajo posredne volitve manjšo legitimnost za izvoljene člane Državnega sveta, v primerjavi z legitimnostjo volitev poslancev Državnega zbora, ki so izvoljeni na neposrednih volitvah. Prav zaradi tega se posredno izvoljen Državni svet težko postavi po robu neposredno izvoljenemu Državnemu zboru in od njega zahteva ponovno odločanje o zakonih, ki jih je Državni zbor enkrat že sprejel.

Zaradi navedenega bi bilo primerno, da bi vsaj za del članov Državnega sveta, to je za predstavnike lokalnih interesov, uredili neposredne volitve. Glede na to, da imajo predstavniki lokalnih interesov v Državnem svetu večino, bi lahko na ta način večinski del v Državnem svetu pridobil večjo legitimnost za sodelovanje v zakonodajnem postopku, obenem pa bi bila zmanjšana možnost

Constitution which is one of the shortest in the world (only 89 articles³⁰), stipulates in Article 24 that the Senate is elected indirectly and that local interests and French citizens that live abroad are represented in it.

The constitutional regulation of the National Council of the Republic of Slovenia is a peculiarity in this matter, because it only dictates that it is formed with elections. Constitution stays silent about the type of elections and stipulates that this is answered in the National Council Act which is adopted by the National Assembly with absolute 2/3 majority. It also does not determine fundamental rules about elections e.g. if the elections are indirect or direct. However, we can conclude from the constitutional regulation of National Council's jurisdictions and structure that indirect elections are far more appropriate for this institution, because they enable a closer connection between members of interest group and their representatives³¹. At the same time, the legitimacy of the elected members is questionable compared to directly elected members of the National Assembly. That is why the indirectly elected National Council members can sometimes have a hard time standing up to the directly elected National Assembly members when they demand reconsideration of an act that has already been adopted.

In view of the above, it would be appropriate that at least local interest representatives would be elected directly. This would enable an increased legitimacy of the National Council in the legislative procedure, considering that local interests represent its majority. This would also prevent political marketing of elections to the National Council, which is currently possible in the indirect elections due to politically profiled electors. The only instance when

30 Število členov francoske Ustave je sicer večje, saj ima Ustava vrsto amandmajev, ki so uvrščeni med določene člene. Tako so na primer določbe o Evropski uniji navedene med 88-im in 89-im členom in obsegajo člene 88-1 do 88-7.

31 Tako Grad, Franc, 2000: Parlament in vlada, o.c., str. 254.

30 The French Constitution actually has more articles, because it has many amendments. For example, provisions about the European Union are listed between 88th and 89th article and cover articles from 88-1 to 88-7.

31 Grad, F.: Parlament in vlada, o.c., page 254.



političnega trgovanja pri volitvah članov Državnega sveta, saj posredne volitve s politično profiliranimi elektorji omogočajo prav to. V Državni svet so neposredno volili le člane prvega mandata, saj je tako določal Zakon o Državnem svetu v prehodnih določbah.³²

6.1. Zakonska ureditev

Volitve v Državni svet torej v celoti ureja Zakon o Državnem svetu, ne glede na to, da so volitve ustavna kategorija in bi jih bilo bolj primerno urediti v Ustavi. Ravno zato je Ustava v tem delu pomanjkljiva, saj so volitve eden najpomembnejših elementov položaja vsakega ustavnega organa. Ustavno praznino je zapolnil Zakon o Državnem svetu, ki v prvem delu ureja volitve članov Državnega sveta. Ta obsega zgolj 51 členov in kljub temu, da se subsidiarno uporabljajo določbe zakona, ki ureja volitve v Državni zbor, je zakonska ureditev volitev v Državni svet pomanjkljiva in nedoločna. Ne samo, da Ustava volitev v Državni svet ni uredila, zakonska ureditev je prav tako ohlapna, kar odpira vrsto vprašanj. Eno izmed njih je, s kakšno večino se spreminja drugi del Zakona o Državnem svetu. Ustava namreč na zakonsko raven ni odkazala le ureditve volitev v Državni svet,³³ ampak tudi organizacijo Državnega sveta.³⁴ Ustava je tako predvidela sprejem dveh zakonov, ki imata pravno podlago v dveh različnih členih in se sprejemata z različnima večinama - zakon o volitvah v Državni svet z absolutno dvotretjinsko večino, zakon o organizaciji Državnega sveta z navadno večino. Zakonodajalec se je kljub temu odločil za sprejem enega zakona, ki ureja v prvem delu volitve in v drugem delu organizacijo Državnega sveta. Pritrditi je treba mnenju

members of the National Council were elected directly was in the first mandate, because that was stipulated in the transitional provisions of the National Council Act.³²

6.1. Legislative regulation

Even though elections to the National Council are a constitutional category and should be regulated in the Constitution, elections to the Slovenian National Council are regulated in the National Council Act. The constitution is insufficient in this part, because elections are one of the most important elements of every constitutional authority. This constitutional gap was filled with the National Council Act, which in its first part regulates election of the members to the National Council. Even though that it is covered in 51 articles and that the legislative regulation of elections to the National Assembly is used subsidiary, the legislative regulation of the elections to the National Council is still insufficient and indefinite. Not only did the Constitution not define the elections to the National Council, the legislation is just as loose and opens a series of questions such as the necessary majority needed to change the second part of the National Council Act. The Constitution also stipulates that not only the elections, but also the organization of the National Council is determined in the legislative procedure³³. Two different articles of the Constitution predicted the adoption of two different acts with different majorities – an Act on the elections to the National Council with an absolute 2/3 majority and an Act on the organization of The National Council with a regular majority. Despite constitutional regulation, the legislator decided to adopt just one act,

32 Tako določa 66. člen Zakona o Državnem svetu, Uradni list RS, št. 100/05 – UPB, 95/09 – odl. US in 21/13 – ZFDO-F.

33 Ustava Republike Slovenije, 98. člen.

34 Ustava Republike Slovenije, 96. člen.

32 66th article of the National Council Act, Official Gazette of Republic of Slovenia, nr. 100/05 – UPB, 95/09 – decision of the Constitutional Court and 21/13 – ZFDO-F.

33 Constitution of Republic of Slovenia, 98th article.

zakonodajalca, da je s pravno-sistemskega vidika bolje, da so volitve in organizacija Državnega sveta urejene v enem zakonu, vendar težavo predstavlja že navedena različna večina, ki jo Ustava določa za sprejem zakonov, ki urejata organizacijo in volitve v Državni svet. Glede na to, da zakon v prvem delu ureja volitve, ga je treba sprejeti z absolutno dvotretjinsko večino, kar pomeni, da se zahtevnejša večina prenaša tudi na organizacijski del zakona. S takšno večino je zakon sprejela tudi Skupščina v letu 1992.

Zakon ureja, da so posredno, z uporabo instituta volilnih teles (volilnih zborov), voljeni tudi člani slovenskega Državnega sveta, ki predstavljajo zastopstvo nosilcev socialnih, gospodarskih, poklicnih in lokalnih interesov. Člane Državnega sveta voli več interesnih organizacij oziroma lokalnih skupnosti, pri čemer volilno telo sestavljajo izvoljeni predstavniki interesnih organizacij oziroma lokalnih skupnosti. Način izvolitve teh predstavnikov je torej prepuščen interesnim organizacijam oziroma lokalnim skupnostim. V zakonu so urejena le temeljna merila za to, koliko predstavnikov pripada posamezni organizaciji. Vsaka organizacija oziroma druga organizacijska oblika interesnega združenja voli po enega elektorja, ostali elektorji pa so voljeni sorazmerno s številčnostjo članov vsake organizacije posebej. Volitve se izvajajo po načelu enakopravnosti vseh volilnih subjektov, ker pa se subjekti po številu članov razlikujejo, imajo na zakonsko določeno merilo pravico do dodatnih elektorjev v volilnem telesu. V tem primeru se torej volitve opravijo po posebej za volitve izvoljenih elektorjih.³⁵

6.2. Volilna pravica

Posebnost predstavlja tudi ureditev aktivne volilne pravice za volitve v Državni svet, saj se ta razlikuje od aktivne volilne pravice za volitve v Državni zbor, Predsednika

which in its first part regulates elections and in the second part the organization of the National Council.³⁴ From the legal-systematic perspective, this regulation makes more sense, however the constitutional demand of necessary majority to adopt acts that regulate the organization and elections to the National Council is different. Because the elections to the National Council had to be adopted with an absolute 2/3 majority, the organization part of the act had to meet the same criteria. Therefore the National Assembly adopted this act with this majority in 1992.

The members of the National Council that represent social, local, economic, professional interests are elected in indirect elections using the institute of election bodies (election assemblies). The representatives are voted by different interest organizations and local communities where election bodies are composed of elected representatives of these organizations. The way of election of election body representatives is left to the decision of each organization and community. The National Council Act only predicts basic standards on the number of representatives of each organization. Every organization or any other organization form of interest association elects at least one elector. Other electors are voted proportionally to the numerosness of each organization. All electoral subjects are equal, but have the right to extra electors in the election body, since they differ in number of the members. Therefore in this case, the elections are carried out through specially elected electors.³⁵

6.2. The right to vote

The right to vote for elections to the National Council is different comparing to the one for elections to the National Assembly, representatives of local communities and

35 Tako Grad, Franc: Parlament in vlada, o.c., str. 256.

34 Constitution of the Republic of Slovenia, 96th article

35 Grad, F.: Parlament in vlada, o.c., page 256.

republike ter predstavnike lokalnih skupnosti. Če primerjamo zgolj Državni zbor in Državni svet lahko razlog za to najdemo že v dejstvu, da je Državni zbor predstavništvo celotnega ljudstva, medtem ko je Državni svet predstavništvo posamičnih družbenih interesov. Zato je razumljivo, da volilne pravice pri volitvah Državnega sveta ne morejo imeti vsi državljani, ki imajo sicer volilno pravico za volitve v Državni zbor, temveč jo imajo samo člani interesnih skupin, ki jim je zagotovljeno zastopstvo v Državnem svetu.³⁶ Člane Državnega sveta smejo voliti osebe, ki so stare 18 let in v Sloveniji opravljajo ustrezno dejavnost oziroma so v delovnem razmerju (velja za predstavnike funkcionalnih interesov) oziroma imajo stalno prebivališče v ustrezni volilni enoti (če volijo predstavnika lokalnih interesov).³⁷

Aktivno volilno pravico za volitve predstavnikov lokalnih in funkcionalnih interesov Državnega sveta lahko delimo na posredno in neposredno. Pri volitvah predstavnikov funkcionalnih interesov imajo posredno aktivno volilno pravico le predstavniki interesnih organizacij oziroma člani organa znotraj interesne organizacije (npr. senat univerze, izvršilni odbor, upravni odbor), ki ima pristojnost izvoliti osebe v volilno telo. Neposredno aktivno volilno pravico pa imajo izvoljene osebe v volilnem telesu - elektorji. Aktivna volilna pravica pri volitvah predstavnikov lokalnih interesov je še bolj kompleksna kot pri volitvah funkcionalnih interesov. Posredno aktivno volilno pravico pri volitvah predstavnikov lokalnih interesov Državnega sveta imajo v širšem smislu vsi volivci, ki imajo stalno prebivališče v volilni enoti za te volitve; torej vse osebe, ki imajo pravico voliti člane občinskega sveta v posamezni občini iz te volilne enote. V ožjem smislu imajo posredno aktivno volilno pravico člani občinskega sveta, neposredno aktivno volilno pravico pa imajo elektorji,

36 Prav tam, str. 255.

37 Zakon o Državnem svetu, o.c., člen 2.

for the President of the Republic. When only comparing the National Assembly and the National Council, the main reason for this is that the latter is a representative of different social interests whereas the National Assembly represents the people. It is understandable that not everybody that has the right to vote for the National Assembly representatives has the same right to vote for the National Council representatives and that this right is reserved to members of the interest groups that are later represented³⁶. The right to vote for members of the National Council is limited to people that are 18 years old and participate in certain activities, are in working relationship (representatives of functional interests) or have a permanent accommodation in a certain constituency (voting of local interests representative).³⁷

The right to vote representatives of local and functional interests in the National Council can be direct or indirect. When the representatives of functional interests are voted, only representatives of interest organizations or members within the interest organization (university senate, executive board, board of directors) which has the authority to elect people in the election body, have the indirect right to vote. The elected people in the elective body – the electors – have the direct right to vote. The right to vote when voting representatives of local interests is even more complex than voting representatives of functional interests. Everyone that has a permanent accommodation in a certain constituency has in a broader sense the indirect right to vote representatives of local interests in the National Council, because they have the right to elect members of the municipal council in a municipality that is a part of a certain constituency. Members of the municipality council have the indirect right to vote in a

36 Grad, E.: Parlament in vlada, o.c., page 255.

37 National Council Act, o.c., 2nd article

ki jih občinski sveti posamezne volilne enote izvolijo v volilno telo za volitve članov Državnega sveta.

6.2.1. *Volilna pravica tujcev*

Za razliko od volilne pravice za volitve v Državni zbor, ki jo imajo samo državljani Slovenije, imajo volilno pravico pri volitvah Državnega sveta v določenem obsegu tudi tujci, ki v Sloveniji opravljajo ustrezno dejavnost ne enem izmed interesnih področij oziroma so v delovnem razmerju. Ustavno podlago za to najdemo v tretjem odstavku 43. člena Ustave, po katerem zakon lahko določi, v katerih primerih in pod katerimi pogoji imajo volilno pravico tujci. Zakon o Državnem svetu je ne določa za volitve vseh članov Državnega sveta, ampak jo ureja le za tujce, ki sodelujejo pri volitvah predstavnikov funkcionalnih interesov (delodajalci, delojemalci, kmetje, obrtniki, samostojni poklici in predstavniki negospodarskih dejavnosti). Pri tem velja, da zakon volilno pravico nedvomno določa za posredno aktivno volilno pravico (pri volitvah elektorjev), vprašanje pa je, ali jo imajo tudi pri volitvah članov Državnega sveta v elektorskih volilnih telesih (neposredna aktivna volilna pravica). Glede na to, da gre v obeh primerih za aktivno volilno pravico in zakon med njima ne loči, bi bili tujci morda lahko izvoljeni za elektorje, kadar gre za volitve predstavnikov funkcionalnih interesov.

Drugačna pa je ureditev volitev predstavnikov lokalnih interesov. Zakon o Državnem svetu posebej ne določa, da bi imeli tujci volilno pravico pri volitvah predstavnikov lokalnih interesov. Vendar so tujci v letu 2002 s spremembo Zakona o lokalnih volitvah³⁸ pridobili aktivno volilno pravico za volitve v občinske organe v občini, kjer imajo stalno prebivališče, kar pomeni, da imajo tujci aktivno

narrow sense and the electors of each constituent that are elected in the electoral body have the direct right to vote for representatives of the National Council.

6.2.1 *Non-citizens right to vote*

While the right to vote to National Assembly is reserved for Slovenian citizens only, non-Slovenian citizens have the right to vote to the National Council in some scale; if they have a job in Slovenia that belongs to one of the interest fields, or if they are in a working relationship. The Constitution dictates in the 3rd paragraph of the 43th Article that an act can set conditions about when non-citizens do have the right to vote. The National Council Act predicts the non-citizen right to vote only in the case of election of functional interests' representatives (employers, employees, farmers, trades, professionals, crafts and non-commerce activity representatives). The Act undoubtedly predicted the indirect active right to vote (election of electors), whereas we cannot be completely certain about the direct active right to vote (election of representatives of the National Council in electoral bodies). Considering the fact that both rights are active rights to vote and that the National Council Act does not differ between them, non-citizens could be elected as electors, when the election of functional interests' representatives is in progress.

The National Council Act does not mention that non-citizens have the right to vote in local interests' representatives election, even though they have had the right to vote members of municipality bodies in the municipality where they permanently reside since the 2002 change of Local Election Act³⁸. However, this change did not ensure them the passive right to vote – to be elected. Since municipality councils have an indirect active right to vote to

38 Zakon o lokalnih volitvah, Uradni list RS, št. 51/02.

38 Local Elections Act, Official Gazette of the Republic of Slovenia, nr. 51/02.



volilno pravico za volitve v občinske organe, ne pa tudi pasivne volilne pravice za občinske volitve. Glede na to, da imajo občinski sveti posredno aktivno volilno pravico pri volitvah v Državni svet, so na ta način tujci dobili določeno vlogo tudi pri volitvah članov Državnega sveta, ki so predstavniki lokalnih interesov. Pridobili so posredno aktivno volilno pravico v širšem smislu, kar pomeni, da lahko volijo člane občinskega sveta, ne morejo pa biti izvoljeni v občinski svet in zato tudi ne za elektorja v volilno telo za volitve člana Državnega sveta. Aktivna volilna pravica tujcev je v skladu z navedenim zakonom povezana z volitvami občinskega sveta in ne z volitvami članov Državnega sveta, tako da v primeru volitev predstavnikov lokalnih interesov Državnega sveta ni dvoma, da tujci ne morejo postati člani volilnega telesa. Tujci tako ne morejo postati člani Državnega sveta, ki predstavljajo lokalne interese in tudi ne člani občinskega predstavnškega organa, ki je eden izmed osrednjih organov lokalne samouprave.

6.3 Kandidiranje

Ureditev kandidiranja za člane Državnega sveta zakon prav tako v celoti prepušča interesnim organizacijam oziroma lokalnim skupnostim. Te določajo kandidate v skladu s svojimi pravili, pristojne volilne komisije (Državna volilna komisija in volilne komisije volilnih enot) pa skrbijo le za zakonitost vloženih kandidatur, ki so jih dolžne predložiti interesne organizacije oziroma lokalne skupnosti.³⁹

Za člane volilnega telesa so izvoljeni tisti kandidati, ki prejmejo največ glasov, kar pomeni, da je pri ugotavljanju izida glasovanja uporabljen sistem relativne večine. Pri tem bi bilo možno uporabiti tudi kakšen drug volilni sistem, vendar posebna narava razmerja med pripadniki interesne skupine in njihovimi predstavniki v Državnem svetu nakazuje, da je relativna večina ustrezna, saj je

39 Grad, Franc, 2000: Parlament in vlada, o.c., str. 256.

the National Council, non-citizens were granted a certain role in the elections of the local interests representatives. They gained an indirect active right to vote in the broader sense, meaning that they can elect members of the municipality council, but cannot be elected as that member or as an elector in the electorate for the election of the National Council members.

The non-citizens' active right to vote is connected to municipality council election and not the election of representatives in the National Council. Therefore, there is no doubt that non-citizens cannot be a part of an electorate in the elections of local interest representatives. Non-citizens can also not be a part of the National Council that represents local interests or even members of a municipality's representative authority, which is one of the core authorities of local self-government.

6.3. Candidacy

The candidacy regulation for members of the National Council is left to interest organization and local associations and is not regulated in the National Council Act. The organizations determine candidates by their own rules, whereas competent electoral commissions (National Electoral Commission and Electoral Commissions of constituents) ensure the lawfulness of candidatures that were submitted by interest organizations or local associations³⁹.

Those candidates that receive the most votes are elected as members of the electorate, which means that the relative majority system is established. It would be possible to use a different electing system, however, the special nature of relations between interest group members and their National Council representatives shows that the relative majority is suitable, as the connection between

39 Ibid.

povezanost med volilno bazo in izvoljenimi predstavniki v tem primeru utemeljena na drugačnih razmerjih kot je sicer pri neposrednih volitvah.⁴⁰ V primeru ko dvoje ali več kandidatov dobi enako število glasov, odloči o izvolitvi med njimi žreb, ki ga opravi volilni odbor.

6.4. Volilni postopek in vloga elektorskih volilnih teles

V Državnem svetu so prisotne različne interesne skupine in vsaka izmed njih je izvoljena na poseben način. V skladu s 96. členom Ustave so v Državnem svetu štirje predstavniki delodajalcev, ki jih na podlagi zakona voli volilno telo (elektorji), ki ga sestavljajo izvoljeni predstavniki gospodarskih zbornic in združenj delodajalcev, ki so organizirana za območje države. Vsaka gospodarska zbornica in vsako združenje delodajalcev izvoli v volilno telo po enega predstavnika na vsakih dopolnjenih 10.000 zaposlenih delavcev pri njihovih članih.

Ustava določa, da ima interesna skupina delojemalcev, enako kot interesna skupina delodajalcev, v Državnem svetu štiri predstavnike. Voli jih volilno telo, v katerega izvolijo elektorje reprezentativni sindikati za območje države. Reprezentativni sindikati so tisti, ki jih zakonodajalec glede na njihovo članstvo šteje kot predstavnike delavcev na različnih področjih dela.

V Državnem svetu so tudi štirje predstavniki kmetov, obrtnikov in samostojnih poklicev. Tri kategorije subjektov volijo štiri člane Državnega sveta, zato je moral zakonodajalec eni od njih določiti dva predstavnika. Tako so dva predstavnika svojih interesov dobili kmetje, volijo pa ju poklicne organizacije kmetov, kot so zbornice, združenja, društva ali zveze.⁴¹

⁴⁰ Prav tam, str. 257.

⁴¹ Zakon o državnem svetu, ZDSve-UPB1, Uradni list RS, št. 100/05, čl. 28–33.

the electoral base and elected representatives is based on different relations than in direct elections.⁴⁰ When two or more candidates get the same number of votes, the election is decided by drawing lots.

6.4. Election process and the role of elector electorates

Different interest groups exist in the National Council and each is elected in a specific way. As Article 96 of the Constitution dictates, the National Council is home to 4 employer representatives, elected based on law by electorate (electorates), composed of elected Chamber of Commerce representatives and employer associations that are organized in the country. Every Chamber of Commerce and employer organization elects one member of the electorate per every 10 000 employees of their members.

The Constitution dictates that an employee interest group has 4 representatives in the National Council, the same as employers. They are elected by the electorate which was formed by representative unions which elected them. Unions are by the legislator considered to be representative based on the structure of their membership. Representative Unions are essentially representatives of employees in different fields of labor.

The National Council is also the home of 4 representatives of farmers, craftsmen and professional occupations. 4 representatives are voted by 3 categories of subjects, from which farmers get 2 representatives. The representatives are elected by professional farmer organizations such as chambers, associations, societies and unions.⁴¹

Article 96 of the Constitution dictates that there are also 6 members of non-commercial activities in the

⁴⁰ Ibid, page 257

⁴¹ National Council Act, ZDSve-UPB1, Official Gazette of the Republic of Slovenia, nr. 100/05, ar. 28–33.

Ustava v 96. členu določa, da Državni svet sestavlja tudi šest predstavnikov negospodarskih dejavnosti, vendar pri tem ne določa, kateri so ti predstavniki, ampak to prepušča zakonu, ki ureja volitve in organizacijo Državnega sveta. Zakonsko je določeno, kateri interesi negospodarstva so zastopani s šestimi predstavniki negospodarskih dejavnosti v Državnem svetu: predstavnik univerz, visokih šol in višjih šol, predstavnik za področje vzgoje in izobraževanja, predstavnik za področje raziskovalne dejavnosti, predstavnik za področje kulture in športa, predstavnik za področje zdravstva in predstavnik za področje socialnega varstva.

Zakon o Državnem svetu natančno določa število elektorjev in kandidatov za člane Državnega sveta. Pri volitvah predstavnikov lokalnih interesov lahko vsaka lokalna skupnost izvoli enega kandidata in elektorje, katerih število je sorazmerno številu prebivalcev v lokalni skupnosti. Vsaka lokalna skupnost izvoli v volilno telo po enega predstavnika, ne glede na število prebivalcev, in po enega predstavnika na vsakih dopolnjenih pet tisoč prebivalcev. Ne glede na navedeno obstajajo številna odprta vprašanja v zvezi z določanjem elektorjev in kandidatov za člane Državnega sveta. Pri volitvah predstavnikov lokalnih interesov ni problematično število elektorjev, ki jih lokalne skupnosti lahko imenujejo v volilno telo, ampak kdo je lahko elektor. Ustavno sodišče je navedlo⁴², da se lahko za elektorje predlagajo le člani občinskega sveta, čeprav Zakon o Državnem svetu določa, da volilno telo sestavljajo izvoljeni predstavniki lokalnih skupnosti, če se člani Državnega sveta volijo v volilni enoti, ki obsega območje dveh ali več lokalnih skupnosti.

Kljub navedenemu se problem določanja števila elektorjev pojavlja predvsem pri volitvah predstavnikov funkcionalnih interesov Državnega sveta. Vsaka interesna

National Council, but does not specify who these representatives are, leaving the regulation to the National Council Act. The Act stipulates which non-commercial activities are represented with the 6 representatives: representative of universities, higher schools, colleges, upbringing and education representative, science representative, representative of culture and sports, health representative and a social security representative.

The National Council Act predicts a certain number of electors and National Council candidates. In local interest representative's election, each local community can elect one candidate and an additional proportionate number of electors based on the number of dwellers of the community. Each local community can elect at least one representative in the electorate no matter the number of inhabitants, and one extra for every 5 000 inhabitants. Even though this seems like a reasonable regulation, there are still open questions about determining electors and candidates for the National Council. The number of elected electors that the local communities can name in the electorate is not problematic, but rather who an elector in the election of local interest representatives can be. The Constitutional Court decided⁴² that only members of municipality councils can be suggested as electors, despite National Council Act stipulation that electorate is composed of elected local community representatives, if the National Council members are being elected in a constituency that covers an area of at least 2 local communities.

However, the problem of determining the number of electors does occur in the election of functional interest representatives. Each interest organization that has the right to propose electors and candidates for the National

42 Odločba Ustavnega sodišča U-I-358/02 z dne 24. 10. 2002, Uradni list RS, št. 93/02.

42 Decision of the Constitutional Court U-I-358/02 from 24. 10. 2002, Official Gazette of the Republic of Slovenia, nr. 93/02





organizacija, ki ima pravico predlagati elektorje in kandidate za člane Državnega sveta, lahko določi neomejeno število kandidatov, enega elektorja in dodatne elektorje, če je članstvo v organizaciji višje od zakonsko določenega kriterija. Pri tem vsaka gospodarska zbornica, vsako združenje delodajalcev in vsak sindikat izvoli dodatnega elektorja na dopolnjenih deset tisoč članov, vsaka poklicna organizacija kmetov lahko izvoli dodatnega elektorja na dopolnjenih tisoč članov, vsaka poklicna organizacija obrtnikov pa na dopolnjenih petsto članov, vsaka poklicna organizacija samostojnih poklicev, pedagoških delavcev, raziskovalcev, kulturnih in športnih delavcev, zdravstvenih delavcev ter strokovnih delavcev na področju socialnega varstva pa lahko izvoli dodatnega elektorja na dopolnjenih sto članov. Izjema so volitve predstavnika univerz, visokih in višjih šol, ker ti zavodi ne izvolijo dodatnih elektorjev, ampak ima vsak omenjeni zavod po enega predstavnika v volilnem telesu, ne glede na število študentov ali profesorjev.⁴³

Kot predstavljeno sodelujejo pri volitvah v Državni svet številna združenja in organizacije civilne družbe, ki so neodvisna od politike. Glede na število članov lahko predlagajo elektorje in kandidate ter si na ta način zagotovijo zastopstvo svojega člana v Državnem svetu. Ker politične stranke nimajo neposrednega vpliva na njihovo izvolitev, ne morejo vplivati na njihovo delovanje tekom mandata Državnega sveta, kar se pomembno odraža pri delu Državnega sveta. Seje Državnega sveta so v primerjavi s sejami Državnega zbora ravno zato manj politično obarvane, razprave pa bolj vsebinske, kar pomembno vpliva na kakovost delovanja parlamenta v Sloveniji.

V skladu s 96. členom Ustave je v Državnem svetu 22 predstavnikov lokalnih interesov, ki jih izvolijo lokalne skupnosti oziroma volilna telesa, ki jih sestavljajo izvoljeni

43 Več o tem gl. Štrus, Dušan, Zagorc, Saša, 2010: Ohlapna in nedosledna ureditev volitev v državni svet, Zbornik znanstvenih razprav. - ISSN, 1854-3839. - Letn. 70 (2010), str. 285-314.

Council, can propose an unlimited number of candidates, as well as an additional elector and extra electors if the membership in the organization is higher than criteria set in the legislation. Every Chamber of Commerce, employer associations and union can elect an extra elector for every 10 000 members, every professional farmer organization an extra elector for every 1000 members, each professional organization of craftsmen for every 500 members, each professional organization of independent professions, pedagogical staff, scientists, cultural and sport staff, healthcare staff and social security professionals can elect one extra elector for every 100 members. The only exception is the election of university, higher school and college representative; these institutions do not elect extra electors, instead, each has one representative in the electorate regardless of the number of students or professors⁴³.

Many associations and civil society organizations that are independent of politics are involved in National Councils elections. Based on the number of their members they can propose electors and candidates, and can in this way ensure a representative in the National Council. Because political parties cannot directly influence National Councils elections, they also cannot influence their actions during their mandate which importantly reflects on the activity of the National Council itself. The National Council sessions are compared to National Assembly sessions less politicized and the debates are more substantive, which greatly influences the quality of the parliament's activity in Slovenia.

In accordance with Article 96 of the Constitution, there are 22 representatives of local interests that are elected by their local communities' electorates, composed of elected representatives of the communities. Local interests

43 See also Štrus, D., Zagorc, S.: Ohlapna in nedosledna ureditev volitev v državni svet, Zbornik znanstvenih razprav. - ISSN, 1854-3839. - Letn. 70 (2010), p. 285-314.

predstavniki lokalnih skupnosti. Lokalni interesi niso neposredno zastopani v Državnem zboru, saj so poslanci Državnega zbora predstavniki vsega ljudstva, čeprav so v preteklosti lahko za poslanca kandidirale tudi osebe, ki so v lokalnih skupnostih opravljale funkcijo župana. Glede na to, da so župani, enako kot poslanci, neposredno voljeni, so imeli župani veliko možnosti za izvolitev v funkcijo poslanca. Ravno zato je v preteklosti v Državnem zboru prišlo do oblikovanja t. i. županskega lobija, torej do neformalnega zastopstva lokalnih interesov. Z gledišča pragmatičnih ciljev političnih strank in interesov lokalnih skupnosti je bilo to razumljivo, s systemskega vidika pa je vodilo v deformiranje sestave Državnega zbora in njegovih razmerij do Državnega sveta, saj Državni zbor ne more in ne sme postati zastopstvo lokalnih interesov, saj je Državni svet te interese dolžan zastopati te interese.⁴⁴ Ravno to je bil povod za večje število poskusov za ugotovitev nezdružljivosti poslanske in županske funkcije. S tem so želeli predlagatelji preprečiti oblikovanje županskega lobija v Državnem zboru in na drugi strani okrepiti vlogo predstavnikov lokalnih interesov v Državnem svetu. Nezdružljivost funkcije je bila od leta 1993 predlagana šestkrat, predlogi pa so vsakokrat prejeli načelno podporo, ki se ob glasovanju o predlogu zakona nikdar ni izkazala za verodostojno. Sedmič so poslanci leta 2011 sprejeli novelo Zakona o poslancih, s katero so določili, da poslanec ne sme opravljati funkcije župana in podžupana v občini.⁴⁵ Od sprejema tega zakona dalje del članov Državnega sveta, predstavniki lokalnih interesov predstavljajo edino obliko predstavništva lokalnih interesov v slovenskem parlamentu, kar je zaradi sestave Državnega sveta in zaradi splošnega predstavništva v Državnem zboru smiselno.

44 Tako Ribičič, Ciril, 2000: Podoba parlamentarnega desetletja, Samozaložba, Ljubljana, str. 60.

45 Uradni list RS, št. 39/II, z dne 25. 5. 2011.

are not directly represented in the National Assembly because its members are representatives of the people. In the past, heads of municipalities – mayors, could contend for a seat in the National Assembly. Given that mayors are elected directly, as are members of the National Assembly, the probability of them becoming members of the National Assembly was great. As a result, a “mayor lobby” which was an informal representation of local interests, was formed in the past in the National Assembly. From the point of view of pragmatic goals, political parties and local community interests, the formation was understandable, while from the systematic point of view it lead to a deformation of National Assembly structure and its relations towards the National Council. The National Assembly cannot and should not become a representative of local interests, because that is the duty of the National Council.⁴⁴ This lead to many attempts of finding the incompatibility of the National Assembly member function and the Mayor function. With these attempts they tried to prevent the formation of the mayor lobby and on the other hand, empowerment of the role of local interests’ representatives in the National Council. Incompatibility was proposed six times since 1993 and all the propositions got some initial support, which was later revoked. Finally, an amendment of the Deputies Act was adopted on the seventh try in 2011, which determined that a member of the National Assembly cannot serve as Mayor or Vice Mayor in a municipality.⁴⁵ Since then, a part of members of the National Council, representatives of local interests are the only form of representation of local interests in the upper chamber of the parliament, which is sensible due to the structure and overall representation in the National Assembly.

44 Ribičič, C.: Podoba parlamentarnega desetletja, Samozaložba, Ljubljana, 2000, p. 60.

45 Official Gazette of the Republic of Slovenia, nr. 39/2011, from 25. 5. 2011

7. MANDAT DRŽAVNEGA SVETA

Državni svet je predstavniško telo, ki ga ni mogoče predčasno razpustiti. Njegovi člani imajo petletni mandat. V zvezi z ureditvijo Državnega sveta pa se postavlja vprašanje, kakšen je mandat članov Državnega sveta - reprezentativen ali imperativen? V Evropi so pri sodobnih parlamentih značilni predvsem reprezentativni mandati, imperativni pa so zelo redki. Imperativen mandat je v Evropi značilen za člane nemškega Zveznega sveta, saj morajo vsi predstavniki dežele v Zveznem svetu glasovati enotno. Vendar se člani Zveznega sveta ne združujejo v politične skupine kot člani Zveznega zbora, temveč tvorijo neformalne skupine dežel, na podlagi trenutnega političnega vodstva v teh deželah.⁴⁶

Vprašanje imperativnosti mandata se postavlja tudi za člane Državnega sveta v Sloveniji. Medtem ko je poslanec Državnega zbora po izrecni ustavni določbi predstavnik vsega ljudstva in ni vezan na kakršnakoli navodila, to za člana Državnega sveta ne velja. Zato z ustavnega vidika ne bi moglo biti sporno, če bi se institucionalno vzpostavila trajna razmerja, ki bi omogočala oblikovanje smernic za delovanje svetnikov in kakšen drug element vezanosti (imperativnosti) njihovega mandata, pa tudi možnosti odpoklica svetnikov ni mogoče izključiti kot nekaj, kar bi izrazilo nasprotovanje zamisli zastopstva lokalnih interesov.⁴⁷ Mnenje ustavno-pravne teorije torej je, da je mandat državnih svetnikov v veliki meri dejansko imperativen, saj je njihova naloga, da zastopajo interese skupine, katerih predstavniki so.⁴⁸

Ne glede na navedeno v Ustavi, Zakonu in Poslovniku ni določb, ki bi zavezovale člane Državnega sveta, da pred odločanjem pridobijo navodila oziroma stališča interesov,

46 A different composition of the Chambers in the bicameral system as a precondition for its efficiency?, o.c., str. 49.

47 Ribičič, Ciril, 2000: Podoba parlamentarnega desetletja, o.c., str. 61.

48 Tako Grad, Franc, 2000: Parlament in vlada, o.c., str. 270.

7. MANDATE OF THE NATIONAL COUNCIL

The National Council is a representative body that cannot be dissolved prematurely. Its members have five-year mandates. The main question regarding the National Council's regulation is whether their members' mandate is representative or imperative. Representative mandates are very common in parliaments of modern Europe, whereas imperative are uncommon. A typical example of an imperative mandate is the mandate of members of the German Bundesrat, as all region representatives in the Bundesrat have to vote unanimously. However, members of the Bundesrat do not form political groups as members of Bundestag do; instead they associate in informal region groups based on the current political leadership in the regions.⁴⁶

The question of imperative mandate arose also for members of the Slovenian National Council. The Constitution determines that a member of the National Assembly is a representative of the people and is not bound by any instructions, whereas the same cannot be said for a member of the National Council. On that ground, it could not be unreasonable if permanent relations are formed institutionally, which would establish councilor activity guideline, some other element of imperativism of their mandate, and possibly even a National councilor's recall, since it would not negate the idea of local interests' representation.⁴⁷ The constitutional theory opinion is that the mandate of national councilors is mostly imperative because their main purpose is to represent their interest groups.⁴⁸

There are no provisions that would bind councilors to work under instructions or to even represent a certain interest in decision-making. However, they have to inform

46 A different composition of the Chambers in the bicameral system as a precondition for its efficiency?, o.c., p. 49.

47 Ribičič, C.: Podoba parlamentarnega desetletja, o.c., p. 61.

48 Grad, F.: Parlament in vlada, o.c., p. 270.



ki jih zastopajo. Morajo pa na zahtevo interesnih organizacij oziroma lokalnih skupnosti, ki jih zastopajo, slednje obveščati o svojem delu ter vlagati pobude in predloge na njihovo zahtevo. Te obveznosti pa vsebinsko v precejšnji meri nakazujejo na vsaj delno imperativni mandat članov Državnega sveta. V celoti seveda to ne velja, sicer bi bil državni svetnik vselej dolžan glasovati v skladu z danimi navodili svoje interesne baze.

Poleg navedenega člana Državnega sveta ni mogoče razrešiti na podlagi neustreznega zastopanja interesov svoje volilne baze. Razlogi za razrešitev člana Državnega sveta so navedeni v 63. členu Zakona o Državnem svetu in se ne razlikujejo od razlogov za razrešitev poslanca Državnega zbora, določenih v Zakonu o poslancih. To pomeni, da zakonodajalec pri ureditvi instituta razrešitve ni sledil vezanosti člana Državnega sveta na interes, ki ga predstavlja. Ravno zato je mandat člana Državnega sveta bližje reprezentativnemu kot pa imperativnemu.

8. FUNKCIJA ČLANOV IN PREDSEDNIKA DRŽAVNEGA SVETA

Zakon o Državnem svetu določa, da je funkcija člana Državnega sveta častna. Kaj pravzaprav pomeni častna funkcija? Ta termin zasledimo tudi v nekaterih področnih zakonih za druge organe (npr. v Zakonu o volitvah v Državni zbor in Zakonu o lokalnih volitvah, ki določata, da je funkcija članov volilnih organov častna). Vsekakor častnost funkcije ne pomeni, da se funkcija opravlja brezplačno, vendar to na drugi strani onemogoča, da se funkcija opravlja poklicno. To pomeni, da noben član Državnega sveta, razen predsednika, svoje funkcije ne opravlja poklicno. Državni svetniki so namreč še vedno zaposleni na delovnem mestu, ki so ga opravljali do izvolitve v funkcijo člana Državnega sveta. To pomeni, da so

interest organizations and local communities they represent about their progress and file initiatives and proposals on their appeal. These obligations indicate an imperative nature of the National Council's member mandate. Nevertheless, the mandate is not fully imperative; if it were, the councilor would always have to vote in accordance with the instructions of his interest base.

Furthermore, the National Council cannot be dissolved based on interest representation of its voting base. The National Councilor dissolving reasons are stated in Article 63 of the National Council Act and are the same as for a National Assembly member stated in the Deputies Act. The legislator did not determine the National Councilor's duty to follow represented interests as a reason for dismissal when the dissolving institute was regulated. Consequently, the National Councilors mandate is in fact much closer to a representative than imperative.

8. MEMBERS AND PRESIDENTS OF THE NATIONAL COUNCIL FUNCTION

The National Council Act states that a National councilor's function is honorable. But what does "honorable function" actually mean? This term can be found in some of the sectorial acts (e.g. National Assembly Elections Act and Local Elections Act state that the function of election authority members is honorable). Honorability of the function does not mean it is carried out for free, but prevents it from being professional. No member of the National Council, except the President, performs his function professionally. National councilors are mostly still employed where they had worked when they were elected as members of the National Council. Therefore, members of the National Council can simultaneously be mayors, board chairmen, presidents of associations,

člani Državnega sveta hkrati župani, predsedniki uprav, predsedniki združenj, zvez, direktorji občinskih uprav ipd. Nepoklicna funkcija članov Državnega sveta je po mojem mnenju boljša od poklicne, saj omogoča neposredno povezanost člana Državnega sveta z interesom, ki ga predstavlja v Državnem svetu.

Kot že navedeno, je edini član Državnega sveta, ki svojo funkcijo opravlja poklicno, predsednik Državnega sveta. Drugače je bilo le v letih od 2005 do 2009, saj je takrat Državni zbor z novelo Zakona o Državnem svetu⁴⁹ uvedel nepoklicnost funkcije predsednika Državnega sveta. Ustavno sodišče je ugotovilo⁵⁰, da je takšna ureditev protiustavna in Državnemu zboru naložilo odpravo ugotovljenega neskladja. Menilo je namreč, da je treba dati prednost tesnejši povezanosti predsednika Državnega sveta z delovanjem tega organa kot celote v razmerju do njegove siceršnje funkcije člana tega organa. Za učinkovito delo Državnega sveta je po mnenju Ustavnega sodišča namreč treba zagotoviti stalno razpoložljivost predsednika, saj se lahko le tako Državni svet na aktivnosti Državnega zbora pravočasno odzove. Ureditev, ki tega ne zagotavlja, lahko pomeni oviro pri izvrševanju vodstvenih odgovornosti predsednika Državnega sveta in oteževanje izvrševanja ustavne vloge Državnega sveta. Ker Državni zbor v šestmesečnem roku neskladja ni odpravil, je Ustavno sodišče na predlog Državnega sveta izdalo novo odločbo⁵¹. V njej je ugotovilo, da še vedno obstajajo vsi razlogi, na podlagi katerih je že ugotovilo protiustavnost prejšnje ureditve nepoklicnosti funkcije predsednika Državnega sveta. Da bi se v vmesnem času, torej do sprejema pričakovane novele zakona, prekinilo protiustavno stanje, je Ustavno sodišče na podlagi drugega odstavka 40. člena Zakona o Ustavnem sodišču določilo način izvršitve svoje

unions, directors of municipal authorities etc. In my opinion, unprofessional function of the National Council members is better than professional, as it enables a direct connection of the member to the interest he represents.

Furthermore, the only professional member of the National Council is its President. From 2005-2009 this was not the case, because the National Assembly adopted an amendment to the National Council Act⁴⁹ that stipulated that the President of the National Council does not carry out his function professionally. Later on, the Constitutional Court found this solution to be unconstitutional⁵⁰ and obligated the National Assembly to eliminate the disparity. The Constitutional Court thought that a closer connection between the President of the National Council and the authority activity would be of great benefit. In order to ensure efficiency of the National Council, the Constitutional Court thought that the president should be constantly available, in order to promptly respond to activities of the National Assembly. Any regulation that would not ensure constant availability could obstruct the president in his management responsibilities and represent a difficulty in the enforcement of the National Council's constitutional role. Because the National Assembly did not eliminate the disparity in the 6 month time limit, the Constitutional Court had to make a new decision⁵¹ and found that reasons for former unconstitutional regulation of the unprofessional function of the National Council's President still exist. In order to interrupt the unconstitutional state until the expected amendment the Constitutional Court determined a way to enforce its decision under the second paragraph of Article 40 of the

49 Uradni list RS, št. 76/05, z dne 12. 8. 2005

50 Gl. odločbo US, št. U-I-332/05, z dne 4. 10. 2007.

51 Gl. odločbo US, št. U-I-248/08, z dne 11. 11. 2009.

49 Official Gazette of the Republic of Slovenia, nr. 76/05, from 12. 8. 2005

50 See decision of the Constitutional Court, nr.U-I-332/05, from 4. 10. 2007

51 See decision of the Constitutional Court, nr.U-I-248/08, from 11. 11. 2009

odločbe: predsednik Državnega sveta začne z dnem po objavi odločbe Ustavnega sodišča svojo funkcijo ponovno izvrševati poklicno. Gre za enega izmed redkih primerov revotacije in stopnjevanja sankcij na Ustavnem sodišču, s katero se je Ustavno sodišče prelevilo iz negativnega v pozitivnega zakonodajalca: iz razveljavitve obstoječe ureditve in naložitve šestmesečnega roka Državnemu zboru za spremembo zakonske ureditve, v neposredno spremembo ureditve poklicnosti funkcije predsednika Državnega sveta na podlagi odločbe Ustavnega sodišča.

9. IMUNITETA ČLANOV DRŽAVNEGA SVETA

Imuniteta pomeni pravico oziroma privilegij posameznika, da je izvzet iz uporabe posameznih pravnih predpisov. Gre za pravno neodgovornost in pravno nedotakljivost tistega, ki ima imuniteto. Institut imunitete namreč zagotavlja po eni strani pravno varnost in neodvisnost članov pri opravljanju njihove funkcije pred možnimi arbitrarnimi postopki državnih organov in neutemeljenim preganjanjem nosilca javne funkcije, po drugi strani pa nemoteno delovanje parlamenta in v tem okviru njegovih članov. Imuniteta torej ne pomeni osebne pravice člana parlamenta.

Imuniteta članov Državnega sveta je, tako kot imuniteta poslancev Državnega zbora, urejena že v Ustavi.⁵² Ustava določa le, da je ureditev imunitete članov Državnega sveta enaka ureditvi imunitete poslancev v 83. členu Ustave, s to razliko, da o imuniteti članov Državnega sveta odloča Državni svet, tako kot o imuniteti poslancev odloča Državni zbor. Tako kot je poslanska imuniteta urejena v Zakonu o poslancih⁵³, je tudi imuniteta člana

⁵² Glej 100. člen Ustave Republike Slovenije.

⁵³ Glej 21. in 22. člen Zakona o poslancih, Uradni list RS, št. 112/05 – uradno prečiščeno besedilo, 109/08, 39/11 in 48/12.

Constitutional Court Act; the president of the National Council can again start performing his function professionally a day after publication of this decision. This is a rare case of revocation and escalation of sanctions of the Constitutional Court which transformed the Court from a negative to a positive legislator, from nullification of the regulation and determining a 6 month time limit for the National Assembly to adopt a new regulation, to direct change of legislation on the grounds of its decision.

9. NATIONAL COUNCIL MEMBER'S IMMUNITY

Immunity is any individual's right and privilege to be exempt from application of a certain regulation. It is a legal non-liability and legal protection of the person that has it. Immunity provides legal certainty and independence of active members from possible arbitrary procedures of other state authorities and groundless prosecutions of public office holders on one hand, and on the other, undisturbed parliamentary activity and its members' activity. Therefore, we can say that immunity is not a personal right of a parliament member.

The immunity of members of the National Council is just like the immunity of National Assembly members regulated in the Constitution⁵². The Constitution states that the National Council's member immunity is the same as immunity of a member of the National Assembly. National Assembly's members' immunity is regulated in Article 83 of the Constitution, however, each authority decides on its own members' immunities. Both immunities are regulated not only in the Constitution, but also in legislation; for National Assembly members in the

⁵² See the 100th article of the Constitution of Republic of Slovenia

Državnega sveta zakonsko urejena.⁵⁴ Določbi zakonske ureditve poslanske imunitete sta si smiselno podobni, tako da sta ureditvi imunitete za člane obeh domov povsem identični, kar je v skladu s 100. členom Ustave. Zakonske določbe v obeh zakonih postopka v zvezi z imuniteto ne urejajo podrobno, zato je ta urejen v poslovniki obeh domov.

Član Državnega sveta ne pridobi imunitete z izvolitvijo v Državni svet, ampak šele s potrditvijo njegovega mandata in jo uživa do prenehanja mandata.⁵⁵ Imuniteta obsega tako profesionalno kot tudi neprofesionalno imuniteto. Član Državnega sveta, enako kot poslanec, ni kazensko odgovoren za mnenje ali glas, ki ga je izrekel na sejah Državnega sveta ali njegovih delovnih teles. To je materialna imuniteta, ki je samo poklicna, vendar absolutna, ker izključuje kazensko odgovornost člana tako v času opravljanja funkcije kot tudi po izteku mandata.

Ureditev imunitete določa tudi procesno imuniteto. Član Državnega sveta ne sme biti priprt niti se zoper njega, če se sklicuje na imuniteto, ne sme začeti kazenski postopek brez dovoljenja Državnega sveta, razen če je bil zaloten pri kaznivem dejanju, za katero je predpisana kazen zapora nad pet let. Procesna imuniteta je relativna, saj člana varuje le toliko časa, dokler traja njegov mandat v Državnem svetu. Pri tem je treba poudariti, da ga varuje le pred kazenskim postopkom, ne pa tudi pred drugimi postopki - prekrški, civilnimi delikti, disciplinskim postopkom ipd..

54 Glej 60. člen Zakona o Državnem svetu.

55 Prejšnji Poslovnik Državnega sveta iz leta 1993 je določal tudi imuniteto za postopke in pripor pred potrditvijo mandata člana Državnega sveta. Takšna ureditev je omogočala naknadno priznanje imunitete članu, ki je bil priprt ali je bil zoper njega začel kazenski postopek še pred potrditvijo mandata. Na ta način je bila članom Državnega sveta zagotovljena širša imuniteta kot jo uživajo poslanci, kar je bilo v neskladju z drugim odstavkom 100. člena Ustave, ki priznava članom Državnega sveta imuniteto le v takšnem obsegu, kot velja za poslance. Posledično je Ustavno sodišče omenjeno ureditev z odločbo št. U-I-335/04 razveljavilo.

Deputies Act⁵³, whereas for National Council members in the National Council Act⁵⁴. Both legislative provisions of the immunity are reasonably alike, which is in accordance with Article 100 of the Constitution. However the procedure regarding immunity is not regulated in detail, which is why it is regulated in rules of procedures of both chambers.

Members of the National Council do not acquire immunity when they are elected in the National Council, but only when their mandate is confirmed and they keep their right until the end of the mandate.⁵⁵ The extent of immunity is not only professional but also unprofessional immunity. Every member of the National Council (the same goes for members of the National Assembly) is not criminally responsible for any expressed opinion or casted vote in the National Councils sessions or its working groups. This means material immunity and is not only professional, but also absolute, as it excludes criminal responsibility of a member during and after his mandate.

Our legislation also establishes procedural immunity. Criminal proceeding cannot begin against a member of the National Council if he claims immunity and if the National Council does not give its permission on the matter. The only exception is if he was caught in the criminal act for which a penalty of more than five years

53 See 21st and 22nd article of the Deputies Act, Official Gazette of the Republic of Slovenia, nr. 112/05 – official consolidated text, 109/08, 39/11 and 48/12

54 See the 60th article of the National Council Act

55 Former National Council Act of Procedure from 1993, determined immunity for proceedings and detention before the mandate was confirmed. This enabled subsequent granting of immunity to a member, that was in detention or in criminal proceedings before the mandate was confirmed. This way, members of the National Council enjoyed a much broader immunity than members of the National Assembly, which was not in accordance with the 100th article of the Constitution, which grants immunity to councilors in same scale as it does to deputies. Consequently, the Constitutional Court dissolved this regulation with decision nr. U-I-335/04



Postopek v zvezi z imuniteto se razlikuje glede na dejstvo, ali se član Državnega sveta sklicuje na imuniteto ali ne, in glede na težo storjenega kaznivega dejanja. Če so podani pogoji za odreditev pripora člana Državnega sveta ali če so podani pogoji za začetek kazenskega postopka proti državnemu svetniku, ki se sklicuje na imuniteto, pristojni državni organ⁵⁶ pošlje zahtevo za dovolitev pripora oziroma za začetek kazenskega postopka predsedniku Državnega sveta. Če se član Državnega sveta ne sklicuje na imuniteto, lahko sodišče začne kazenski postopek brez predhodnega dovoljenja Državnega sveta. V primeru, ko je bil član Državnega sveta priprt ali je bil proti njemu začel kazenski postopek, ker je bil zaloten pri kaznivem dejanju, za katerega je predpisana kazen zavora nad pet let, pristojni državni organ nemudoma pošlje predsedniku Državnega sveta obvestilo o priporu ali o začetku kazenskega postopka. Takšno obvestilo je državno tožilstvo oziroma sodišče dolžno poslati tudi v primeru, ko se član Državnega sveta ni skliceval na imuniteto.

Predsednik Državnega sveta zahtevo ali obvestilo takoj pošlje Mandatno-imunitetni komisiji Državnega sveta. Pri obravnavanju zahteve ali obvestila komisija presodi, ali je priznanje imunitete nujno za opravljanje svetniške funkcije. Praviloma se šteje, da je priznanje imunitete lahko nujno za opravljanje funkcije v primeru, ko namerava pristojni državni organ člana Državnega sveta pripreti ali ko ga je že priprl, ne pa tudi v primeru, ko namerava proti njemu začeti kazenski postopek ali ko ga je že začel. Pri obravnavi zahteve ali obvestila Mandatno-imunitetna komisija ne vrednoti dokazov in ne presoja, ali je podano dejansko stanje očitano kaznivega dejanja in ali je član Državnega sveta kazensko odgovoren, saj ta večinoma razpolaga le s podatkom, katerega kaznivega dejanja je

⁵⁶ Pristojni državni organ je državno tožilstvo, ki lahko zahteva uvedbo preiskave oziroma pripora, ali sodišče, ki preiskavo oziroma pripor uvede.

in jail is laid down. Procedural immunity is quite relative, since it protects the member only until the end of the mandate. Furthermore, members are protected only from criminal procedures and not from other procedures such as offences, civil delicts, disciplinary proceedings etc.

Procedures differ whether the councilor claims immunity or not, and based on the gravity of the offence committed. If conditions for detention or beginning of criminal proceedings against a member of the National Council that claims immunity are met, the competent state authority⁵⁶ sends a request for detention or beginning of the criminal proceedings to the President of the National Council. If the National councilor does not claim immunity, the court can start criminal proceedings without any authorization from the National Council. Whenever a member of the National Council was detained or criminal proceedings were introduced because he was caught in the act which lays down a penalty of 5 years in jail, the competent state authority sends a detention notice or a notice about the beginning of proceedings to the President of the National Council. Even when the member of the National Council does not claim immunity, the Public Prosecution or the court is obligated to send its notice to the National Council.

The President of the National Council sends the request or notice to the Mandate-Immunity Commission of the National Council. When processing the request or notice, the commission assesses whether granting of immunity is necessary to perform the National councilor's function. Granting immunity is usually necessary when competent state authority plans to detain or has already detained a member of the National Council, but not in the case when they plan or already have introduced criminal

⁵⁶ The competent state authority is the National Prosecution, which can demand the start of investigation or detention, or a court, that can actually start the investigation or detention.

član Državnega sveta osumljen. Na seji komisije, ki je za javnost zaprta, se o zadevi lahko razpravlja, vendar samo z vidika delovanja Državnega sveta in opravljanja funkcije člana Državnega sveta v primeru pripora oziroma začetka kazenskega postopka. Na predlog komisije Državni svet na seji brez razprave in obrazložitve glasu odloča o tem, ali državnemu svetniku imuniteto prizna ali mu je ne prizna. Razprava na seji Državnega sveta torej ni možna, razen v primeru, če se seja Državnega sveta zapre za javnost.

10. NEZDRUŽLJIVOST FUNKCIJE ČLANOV DRŽAVNEGA SVETA

Nezdrušljivost funkcij pomeni, da določene osebe ne morejo hkrati opravljati več funkcij, ker bi lahko prišlo do morebitnih izkoriščanj, zlorab javnih funkcij ali položaja funkcionarja. Tudi nezdrušljivost je, podobno kot institut imunitete, urejena že v Ustavi. Ustavo, ki določa, da član Državnega sveta ne sme biti hkrati poslanec Državnega zbora, dopolnjuje Zakon o Državnem svetu, ki ureja, da državni svetnik ne sme opravljati druge funkcije v državnih organih. Državnemu svetniku, ki nastopi funkcijo, ki je nezdrušljiva s funkcijo člana Državnega sveta, preneha mandat z dnem, ko nastopi to funkcijo. Nezdrušljivost je za državne svetnike določena ožje kot za poslance Državnega zbora, kar je tudi logično, saj so državni svetniki predstavniki interesov in nepoklicno opravljajo svojo funkcijo, v nasprotju s poslanci, ki so predstavniki vsega ljudstva in funkcijo opravljajo poklicno.

Za razliko od poslanca je član Državnega sveta lahko zaposlen v državnih organih, vendar ne kot funkcionar, ampak kot uradnik. Poleg tega lahko opravlja tudi pridobitno dejavnost in poklicno opravlja vse funkcije v organih lokalnih skupnosti. Glede nezdrušljivosti javne funkcije s pridobitno dejavnostjo za člane Državnega

procedure. When processing requests or notices the Mandate-Immunity Commission does not evaluate evidence and does not enquire about circumstances of the charge or even criminal responsibility, because it mostly only operates with the information regarding the criminal offence that the member of the National Council is suspect of. On a closed Commission session the matter can be discussed only in regards to the activity of the National Council and performing of the member's function in case of detention or beginning of the criminal procedure. By Commission's opinion, the National Council can without any discussion and explanation of vote decide whether the member of the National Council will be granted or denied immunity. The only way discussion in a session of the National Council is possible, is if the session is closed to the public.

10. INCOMPATIBILITY OF THE NATIONAL COUNCIL MEMBERS' FUNCTION

Function incompatibility means that certain people cannot carry out more functions, since it would lead to possible exploitations, misuse of public functions or official's position. Just like immunity, incompatibility is also regulated in the Constitution which stipulates that a member of the National Council cannot be a member of the National Assembly. The Constitution is supplemented by the National Council Act, which states that National councilors cannot perform any other functions in other state authorities. As a National councilor gets a new job that is incompatible with his function as a member of the National Council, the mandate is terminated on the same day. Incompatibility is set much looser for National councilors than for members of the National Assembly, since the councilors are representatives of interests and carry out their function non-professionally, whereas the

sveta veljajo omejitve, ki se nanašajo na nepoklicne funkcionarje. To pomeni, da lahko opravljajo pridobitno dejavnost v zasebne namene, če zaradi narave pridobitne dejavnosti, ki jo opravljajo, to ne ovira objektivnega in od zunanjih vplivov neodvisnega opravljanja funkcije.

Tako člani Državnega sveta opravljajo funkcije na lokalni ravni (npr. župan, podžupan) ali so zaposleni na različnih delovnih mestih (npr. predsedniki in člani uprav gospodarskih družb, zdravniki, učitelji, profesorji, predsedniki sindikatov, direktorji zbornic ipd). Hkratno opravljanje funkcije župana in člana Državnega sveta z ustavnopravnega vidika ni sporno, saj župan v Državnem svetu predstavlja lokalne interese, torej tiste, ki jih zastopa kot župan in član Državnega sveta. Nasprotno, celo zaželeno je, da člani Državnega sveta, ki so predstavniki lokalnih interesov, opravljajo najvišje funkcije na lokalni ravni, saj so tako najbolj seznanjeni z aktualno problematiko lokalne samouprave, ki jo nato izpostavljajo na sejah v Državnem svetu in na sejah delovnih teles v Državnem zboru.

11. PLAČILO ZA DELO ČLANOV IN PREDSEDNIKA DRŽAVNEGA SVETA

Pri urejanju drugih domov ni pomembna le določitev poklicnosti/nepoklicnosti funkcije predsednika in članov drugih domov, temveč tudi določitev plačila, ki ga ti prejmejo za opravljanje omenjenih funkcij. Predsedniki drugih domov, ki opravljajo v drugih domovih svojo funkcijo poklicno (tudi v Domu lordov Velike Britanije), večinoma prejemajo enako plačo kot predsedniki prvih domov. To velja ne glede na to, da imajo predsedniki drugih domov v sistemih nesimetrične dvodomnosti nedvomno manj izpostavljeno funkcijo kot predsedniki prvih domov. Tudi v Sloveniji na podlagi Zakona o sistemu plač

National Assembly members are representatives of the people and are professionals.

National councilors can work in state authorities as officials, but not as servants. They can have a professional job and be professionally active in authorities of local communities. The same limitations exist for the incompatibility of public office jobs and profitable activities, as they do for unprofessional officials. Hence, they can perform these activities for personal purposes if the nature of the activity does not inhibit their work as members of the National Council from being objective and isolated from external influences.

Members of the National Council can in this way remain on their local level position (e.g. mayor, vice-mayor) or in another workplace (e.g. president and member of business company board, doctor, teacher, professor, union president, chamber director etc.). It is not an issue from the constitutional point of view if a member of the National Council is working as a mayor at the same time, because a mayor represents local interests just like a member of the National Council does. On the contrary, it is even desirable, as they are familiar and aware of the current problematic of local self-government better than anyone else, and can in this way raise issues at sessions of the National Council.

11. MEMBERS AND PRESIDENTS SALARY

In regulation of upper chambers an important question is not only the determination of professionalism and non-professionalism of members and the president, but also determining their salary. Most of upper chamber presidents that are employed professionally (House of Lords in Great Britain) receive the same salary as presidents of the lower chamber, regardless of the fact, that presidents of the upper chamber in asymmetric bicameral system

v javnem sektorju predsednik Državnega sveta prejema skoraj enako plačo kot jo prejema predsednik Državnega zbora – funkcija predsednika Državnega sveta je na podlagi navedenega zakona uvrščena v 64. plačni razred, funkcija predsednika Državnega zbora pa v 65. plačni razred.

Ne samo predsednik, temveč tudi člani drugega doma morajo imeti primeren status in prejeti ustrezno plačilo za opravljeno delo. Večina držav opredeljuje delo članov drugega doma kot zaposlitev, zato člani prejemajo plačo, podobno kot člani prvega doma. Vendar obstajajo tudi izjeme. V Sloveniji, podobno kot v Veliki Britaniji, člani Državnega sveta prejemajo plačilo za opravljanje funkcije v obliki sejnine.

Vendar pa člani Državnega sveta niso prejemali sejin od samega začetka delovanja Državnega sveta. V prvih dveh mandatih Državnega sveta so namreč prejemali tretjino plače poslanca Državnega zbora. Leta 2002, na začetku tretjega mandata, so bile uvedene sejnine in to ne glede na to, da je Zakon o Državnem svetu že od vsega začetka določal, da ima član Državnega sveta pravico do nadomestila izgubljenega zaslužka za čas opravljanja funkcije in pravico do povračila stroškov v zvezi z opravljanjem funkcije. Ta določba, ki je urejala nadomestilo izgubljenega zaslužka, v praksi ni nikoli zaživela, saj je zelo težko določiti, kakšen je celoten izgubljeni zaslužek posameznega člana. Izgubljeni zaslužek se namreč lahko nanaša na čas, ko član Državnega sveta ni na delu pri svojem delodajalcu in na čas po preteku delovnega časa. Prvega je sicer mogoče izračunati, saj se članu Državnega sveta lahko zmanjša plača za čas, ko je odsoten z dela pri delodajalcu in mu Državni svet to razliko povrne. Možno bi bilo tudi, da delodajalec članu Državnega sveta izplača plačo v celoti, pri čemer Državni svet delodajalcu povrne del plače, ki članu Državnega sveta ne bi pripadal, ker je bil zaradi dela v Državnem svetu odsoten pri svojem delodajalcu. Višina tega dela izgubljenega zaslužka bi bila

have a less exposed function. On the ground of the Public Sector Salary System Act, Slovenia has a similar regulation to other countries, because the President of the National Council receives a salary that is almost the same as the President of the National Assembly. The President of the National Council is in the 64th grade whereas the President of the National Assembly in the 65th.

Just like the president, other members of the parliament's upper chamber are entitled to a suitable status and salary for the work they perform. Most countries consider members of the upper chamber as employees and receive a regular salary, whereas in Slovenia (similar to the Great Britain), members of the National Council receive a compensation for meeting expenses.

Nevertheless, members did not get a compensation for meeting expenses since the formation of the National Council. In the first two mandates of the National Council, councilors received one third of a National Assembly member wage. At the beginning of the third mandate, a compensation for meeting expenses was introduced despite the fact that from the very beginning the National Council Act stipulated that every member has the right to compensation of lost profit and reimbursement for working hours as a National counselor. This provision about lost profit compensation never really came to life, because it is very difficult to lay down the total lost profit for each member. Lost profit can be determined with the time that the National councilor was absent from his workplace, as well as the time after business hours. The first can easily be calculated, because for the time of absence his wage can be lowered and the National Council can compensate the difference. Another possibility would be that the employer pays out the entire salary, while the National Council simply compensates the difference in the deserved pay due to member's absence. Because the lost profit also depends on the time the councilor was

vezana na čas, ko je bil član Državnega sveta pri svojem delodajalcu odsoten zaradi dela v Državnem svetu. Nemogoče pa je izračunati izgubljeni zaslužek po preteku delovnega časa. Član Državnega sveta bi lahko namreč po službenem času opravljal še kakšno drugo delo, za katerega bi prejel dodaten dohodek (npr. opravljanje honorarnega dela, pisanje člankov in monografij ipd). V skladu z zakonom, bi mu moral Državni svet povrniti stroške tudi za ta del izgubljenega zaslužka, ki bi ga bilo težko dokazati in izračunati. Težave bi nastale tudi pri izračunih izgubljenega zaslužka za tiste člane Državnega sveta, ki opravljajo delo na vodilnih položajih (predsedniki zbornic, direktorji gospodarskih družb) ali so funkcionarji (npr. župani). Ti večinoma nimajo določenega delovnega časa, pač pa se njihovo delo izvaja v skladu z zahtevami, ki jih terja posamezna funkcija.

Zaradi navedenih težav pri izračunu nadomestila izgubljenega zaslužka je Državni svet večkrat predlagal spremembo določbe o nadomestilu v Zakonu o Državnem svetu, vendar je Državni zbor tudi zaradi zahtevne, absolutne dvotretjinske večine, s katero se spreminja ta zakon, ni uspel spremeniti. Zato mu je to določbo uspelo spremeniti šele z ureditvijo plačila za opravljanje funkcije v novem, 13.a členu Zakona o funkcionarjih v državnih organih,⁵⁷ s katerim je razveljavil določbo o nadomestilu izgubljenega zaslužka iz Zakona o Državnem svetu. V tem primeru je Državni zbor s spremembo zakona, za sprejem katerega se zahteva navadna večina, neposredno razveljavil določbo zakona, ki se sprejema z absolutno dvotretjinsko večino.

absent from his workplace because of his activities in the National Council, it is impossible to calculate lost profit outside of working time since they could perform some other profitable work (e.g. contract work, writing articles, monographies). In accordance with the National Council Act, the National Council is obligated to reimburse lost profit, which is very difficult to prove and calculate. The same problems would also occur when calculating the lost profit for those National Council members that are in managerial positions (chamber presidents, company managers) or are officials (e.g. mayors). They usually do not have strict work hours, as the nature of the job is different and they respond to work when the job demands.

Because calculating the compensation of lost profit is problematic, the National Council has on several occasions proposed some changes to this provision in the National Council Act, but since absolute 2/3 majority is needed to change this act, they never ensured enough support in the National Assembly. Finally, this provision was changed in the Article 13a of the Officials in the State Administration Bodies Act⁵⁷ which dissolved the provision in the National Council Act of lost profit reimbursement. This way, the National Assembly by-passed the constitutional regulation, because it adopted an act with normal majority and dissolved a provision in an act, that can only be changed with the absolute 2/3 majority.

57 Zakon o funkcionarjih v državnih organih, Uradni list RS, št. 21/13.

57 Officials in the State Administration Bodies Act, Official Gazette of the Republic of Slovenia, nr. 21/13

12. VODSTVO IN ORGANIZACIJA DRŽAVNEGA SVETA

12.1. Vodstvo in služba Državnega sveta

Državni svet vodi predsednik Državnega sveta. Izvoli ga Državni svet z absolutno večino. Predsednik Državnega sveta predstavlja Državni svet, pripravlja, sklicuje in vodi seje Državnega sveta ter podpisuje akte, ki jih sprejme Državni svet, skrbi za uresničevanje razmerij z Državnim zborom, z Vlado in drugimi državnimi organi, za sodelovanje s predstavniškimi organi drugih držav, z mednarodnimi parlamentarnimi institucijami ter z mednarodnimi organi in organizacijami. Prav tako skrbi za varovanje časti in ugleda Državnega sveta, za izvajanje poslovnika, dodeljuje zadeve v obravnavo komisijam Državnega sveta, določa sestavo delegacij Državnega sveta za obisk pri organih v drugih državah in za obisk tujih delegacij v Državnem svetu ter opravlja številne druge naloge, ki mu jih določajo Ustava, Zakon o Državnem svetu in Poslovnik Državnega sveta (npr. sklicevanje in predsedovanje sejam kolegija Državnega sveta, določanje dnevnega reda v primeru sklica seje na lastno pobudo ipd.).

Podpredsednik Državnega sveta pomaga predsedniku pri pripravljanju in vodenju sej ter ga nadomešča v primeru zadržanosti. Njegova funkcija je, v nasprotju s funkcijo predsednika, nepoklicna.

Posvetovalno telo, ki pomaga predsedniku pri opravljanju njegovih nalog, je kolegij Državnega sveta. Sestavljajo ga predsednik, podpredsednik Državnega sveta ter vodje interesnih skupin. Sklicuje ga predsednik Državnega sveta. Kolegij Državnega sveta je zelo pomemben za učinkovito delo Državnega sveta, saj njegova sestava zagotavlja, da že pri pripravah sej Državnega sveta sodelujejo vse interesne skupine, kar lahko prepreči možne kasnejše blokade njegovega dela. Predstavniki interesnih skupin

12. MANAGEMENT AND ORGANIZATION OF THE NATIONAL COUNCIL

12.1. Management and service of the National Council

The National Council elects its chairman - the President of the National Council, with an absolute majority. The President represents the National Council, prepares and convenes sessions and signs acts that are adopted by the National Council, takes care of relations with the National Assembly, the Government and other state authorities, cooperation with parliaments of other countries, international parliamentary institutions, and international bodies and organizations. He also protects the honor and reputation of the National Council, takes care of the implementation of the Rules of procedure, issues certain matters to commissions of the National Council, determines the structure of the National Council's delegations that visit other foreign authorities, and for visits of the Slovenian National Council to other foreign delegations, and any other tasks that are demanded by the Constitution, National Council Act and Rules of Procedure of the National Council (convening and managing sessions of the cabinet of the president, determining the agenda when the session is convened by his proposal etc.)

The National Council's vice-president helps the president with the management and takes his role whenever he is absent. His function is contrary to the presidents, non-professional.

The consultative body that helps the president in carrying out his tasks is the Cabinet of the President. It is composed of the President and Vice-President of the National Council, as well as leaders of interest groups. It is convened by the President of the National Council. The Cabinet of the President is very important for National



pri tem skrbijo za pretok informacij med predsednikom Državnega sveta in interesnimi skupinami.

Na sejah Kolegija Državnega sveta sodeluje tudi sekretar Državnega sveta, ki vodi službo Državnega sveta. Imenuje ga Državni svet na predlog predsednika Državnega sveta. Kot vodja službe sekretar Državnega sveta omogoča opravljanje strokovnih in drugih nalog, ki se nanašajo na delo članov Državnega sveta in na zagotavljanje strokovne pomoči pri opravljanju njihove funkcije. Sekretar je na eni strani vodja službe Državnega sveta in na drugi strani pomočnik predsednika in podpredsednika pri pripravi in vodenju sej Državnega sveta. Odgovoren je za organizacijo sej in zagotovitev pogojev za delo Državnega sveta, njegovih komisij in interesnih skupin. Služba Državnega sveta opravlja strokovne, administrativne in tehnične naloge, s katerimi se zagotavljajo pogoji za delo Državnega sveta, njegovih komisij in interesnih skupin ter državnih svetnikov.

12.2. Komisije Državnega sveta

Državni svet ima stalna in občasna delovna telesa. Zakon o Državnem svetu glede sestave delovnih teles določa le, da morajo biti v njih ustrezno zastopani predstavniki interesnih skupin. Natančno sestavo in naziv določa le za Mandatno-imunitetno komisijo, čeprav bi to lahko prepustil poslovniku. Zakon določa popolno enakopravnost vseh interesnih skupin v tej komisiji, saj so v njej paritetno zastopane s po enim članom, ne glede na velikost interesne skupine. Mandatno-imunitetna komisija je tako edina stalna komisija, ki jo mora Državni svet na podlagi Zakona o Državnem svetu ustanoviti v vsakem mandatu.

Vse ostale komisije so zgolj začasna delovna telesa, ki jih Državni svet ustanovi s Sklepom o ustanovitvi in nalogah komisij Državnega sveta. V sklepu se določi sestavo, pristojnosti in število članov posamezne komisije. Državni

Council's efficiency, because its structure ensures participation of all interest groups at session preparations, which can prevent possible blockage of its work. Interest group members also manage the flow of information between the President of the National Council and interest groups.

The Secretary of the National Council, who manages the National Council's Service, is also active in sessions of the President's Cabinet. As head of service, the National Council's Secretary enables professional and regular councilor tasks and at the same time provides professional help with their activity. The Secretary is on the one hand the head of the National Council's Service, and on the other, the President's and Vice-President's assistant in preparing and managing National Council sessions. The Secretary is also responsible for the organization of the sessions and establishing proper work conditions for the National Council, its commissions and interest groups. The National Council Service performs professional, administrative and technical tasks which create necessary conditions for the work of the National Council, its commission, interest groups and councilors.

12.2. National Council's Commissions

The National Council has both permanent and occasional working bodies. The only thing the National Council Act stipulates about the structure of the working bodies is that they must be represented by interest group representatives. All interest groups in this Commission are equal because they are represented with the parity principle with at least one member, no matter the size of the interest group. The Mandate-Immunity Commission is the only permanent Commission that the National Council has to form in every mandate.

All other commissions are simply temporary working bodies that are formed by the National Council and

svet ima v petem mandatu, prav tako kot v drugem, tretjem in četrtem mandatu, osem komisij, ki štejejo med 5 in 16 članov.

Sicer pa sestavo in naloge delovnih teles podrobneje določa Poslovnik Državnega sveta. Delovna telesa obravnavajo zadeve s svojega področja, ki jim jih v obravnavo dodeli predsednik Državnega sveta. Na podlagi Zakona o Državnem svetu lahko zahtevajo pojasnila in podatke v zvezi z zadevami, ki jih obravnavajo, sodelujejo z delovnimi telesi Državnega zbora in jim dajejo mnenja o zadevah iz njihove pristojnosti.

13. PRISTOJNOSTI DRŽAVNEGA SVETA

Vloga drugih domov v zakonodajnem postopku je po svetu zelo različna, kar dela druge domove zelo zanimive za proučevanje in primerjavo. Ureditve se raztezajo od možnosti, ko drugi dom enakopravno s prvim domom obravnava vse predloge zakonov, do možnosti, ko lahko drugi dom le odloži sprejem zakona, svetuje v zakonodajnem postopku, nikakor pa ne more dokončno odločiti o predlogu zakona. Pristojnosti drugih domov se razlikujejo glede na to, ali lahko slednji v zakonodajno proceduro vložijo predlog zakona in sprožijo zakonodajni postopek. Takšna možnost kaže na to, da ima drugi dom moč sam odločati o tem, kdaj bo začel postopek in katere predloge zakonov bo obravnaval po skrajšanem ali nujnem postopku.

Prav tako pomembno je odgovoriti na vprašanje, ali lahko drugi dom med zakonodajnim postopkom spremeni zakon ali ne. Večina drugih domov ima možnost, da ob obravnavi predloga zakona predlaga spremembo njegove vsebine in nato pošlje predlog zakona s sprejetimi amandmaji v ponovno obravnavo prvemu domu. Redki so tisti drugi domovi, ki te možnosti nimajo. Najbolj zanimiva pristojnost v okviru zakonodajnega postopka pa

its Decision on Establishment and tasks of the National Councils Commissions. The Decision determines the structure, jurisdictions and number of members of each commission. The National Council has at the moment in its fifth, just like in the second, third and fourth mandate, 8 commissions, which are composed of 5 to 16 members.

The Rules of Procedure of the National Council determine the structure and tasks of working bodies more thoroughly. Working bodies work and discuss matters that are assigned to them by the National Council. Based on the National Council Act, they can also request additional explanations and information about the matter. They can also cooperate with working bodies of the National Assembly and offer them opinions on matters from their authority.

13. NATIONAL COUNCIL'S COMPETENCES

Internationally, the upper chamber's roles in the legislative procedure are different, making them interesting for comparison and study. Regulations stretch out from the possibility that both chambers can equally discuss all act proposals, to the possibility that the upper chamber can only suspend the adoption of an act and advise in the legislative procedure, but cannot have the final decision on the proposal of the act. Some upper chambers have the jurisdiction to propose new acts and initiate the legislative procedure, whereas others do not. If they have that authority they can also decide when the procedure is going to begin and which act proposals are going through an emergency or shortened procedure.

It is also important to answer the question whether the upper chamber can change the act during the legislative procedure. Most upper chambers have the option to suggest a change in the content of the proposed act and

je reševanje nesoglasij med obema domovoma, še posebej v ureditvah, kjer sta oba domova enakopravna ali skoraj enakopravna v zakonodajnem postopku, saj neuspešno usklajevanje v navedenih primerih lahko privede do ne-sprejema zakona. Končno je potrebno v okvir zakonodajnih pristojnosti uvrstiti tudi možnost drugega doma, da zahteva razpis zakonodajnega referenduma.

Tudi Državni svet je drugi dom, ki ima pristojnosti v zakonodajnem postopku in lahko vpliva na vsebino zakonov. Pristojnosti Državnega sveta so oblikovane tako, da sam ne sprejema dokončnih odločitev, ampak v glavnem svetuje in na druge načine posega v zakonodajni postopek. Pristojnosti Državnega sveta večinoma niso zelo močne, saj lahko le pridobiva informacije, daje mnenja, zahteva uvedbo parlamentarne preiskave in zadrži posamezne odločitve Državnega zbora. Večina pristojnosti je prav tako vezanih na zakonodajni postopek, v katerem državni svet ne sodeluje kot odločujoči organ, ampak organ, ki s svojimi mnenji sooblikuje vsebino zakonov. Njegove pristojnosti, ki bodo podrobneje predstavljene v nadaljevanju, so danes večinoma šibke, vendar je imel Državni svet v preteklosti tudi take pristojnosti, ki jih primerljivi drugi domovi nimajo in jih ne moremo šteti med šibke pristojnosti na zakonodajnem področju (npr. zahteva za razpis zakonodajnega referenduma).

13.1. Zakonodajna iniciativa

Zakonodajna iniciativa je ena izmed pristojnosti, ki jo ima večina drugih domov na svetu. Obstajajo tudi izjeme, kot npr. drugi dom Nizozemske, ki pristojnosti zakonodajne iniciative nima, vendar ima ta na drugi strani tudi številne druge močne pristojnosti, ki krepijo njegovo moč v nizozemskem parlamentarnem sistemu. Prav tako nimajo v vseh dvodomnih ureditvah posamezni člani drugih domov pristojnosti zakonodajne iniciative,

send the proposition of the act with all the amendments for re-examination to the National Assembly. Only a few of the upper chambers do not have this jurisdiction. The most interesting jurisdiction in the legislative procedure is definitely resolving conflicts between them, especially in regulations where both chambers are equal in the legislative procedure, because unsuccessful coordination can lead to a failed adoption of the act. One of important legislative jurisdictions of the upper chamber is also the request for a legislative referendum.

The National Council is an upper chamber that has jurisdictions in the legislative procedure and can influence the content of laws. Its jurisdictions are established in a way that never allows independent decision-making, but mostly advises and cooperates in the legislative procedure in other ways. The jurisdictions of the National Council are not very strong, since it can only collect information, give opinions, demand parliamentary inquiry and suspend the decisions made by the National Assembly. Most of the authorities are bound by the legislative procedure where the National Council participates not as a decision-making, but as an advisory authority that helps co-shape the content of laws with its opinions. Its jurisdictions which will be introduced in detail below are presently very weak, even though the National Council used to have jurisdictions that some comparable upper chambers do not have and cannot be considered as weak jurisdictions in the legislative field (e.g. request to call a legislative referendum).

13.1. Legislative initiative

The legislative initiative is one of the jurisdictions that most of the upper chambers around the world have. However, there are some exceptions such as the upper chamber of the Netherlands, which on the one hand does not have this jurisdiction, but on the other it has

tako kot jo imajo člani prvih domov. Pogosto ima namreč zakonodajno iniciativo vsak posamezen poslanec prvega doma, medtem ko lahko pri večini drugih domov predlaga zakone le drugi dom kot institucija (npr. poljski, češki in španski Senat, nemški Zvezni svet, slovenski Državni svet). Iz take različne ureditve zakonodajne iniciative številnih drugih domov je razvidno, da so ti v primerjavi s prvimi domovi mnogokrat šibkejši. Zakonodajna iniciativa parlamentov je včasih omejena tudi glede na vsebino, ki jo urejajo posamezni zakoni. Predlaganje finančnih zakonov je v nekaterih državah (npr. Velika Britanija, Kanada, Avstralija, Francija, Irska, Rusija) izključno v domeni izvršilne veje oblasti.

Zakonodajna iniciativa Državnega sveta je v Ustavi opredeljena v 97. členu, kot pristojnost Državnega sveta, da lahko zahteva sprožitev zakonodajnega postopka. Ob sprejemanju Poslovnika Državnega zbora v letu 1993 je bilo izpostavljeno vprašanje, ali dikcija 97. člena Ustave pomeni zakonodajno iniciativo ali kaj drugega, saj Ustava v 88. členu določa, da lahko zakone predlaga Vlada, poslanec ali 5.000 volivcev. Državni svet v tem členu ni naveden, zato so se pojavljale interpretacije, da dikcija prve alinee 97. člena ne more pomeniti zakonodajne iniciative, saj pravico do zakonodajne iniciative ureja 88. člen Ustave, vendar si dikciji 88. in 97. člena sploh nista podobni. Prevladalo je namreč stališče, da besedila 97. člena Ustave ni mogoče tolmačiti drugače, kot da gre za zakonodajno iniciativo, saj bi bil v nasprotnem primeru smisel prve alinee 97. člena nerazumljiv. Poleg tega izhaja pravica do zakonodajne iniciative tudi iz siceršnjega ustavnega položaja Državnega sveta.⁵⁸

Zanimivo vprašanje je tudi, ali Državni svet z zakonodajno iniciativo že sodeluje v zakonodajnem postopku ali ne? Po mnenju teorije bi zakonodajno iniciativo lahko

58 Grad, Franc: Parlament in vlada, o.c., str. 263.

numerous different jurisdictions that strengthen its power in the Dutch parliamentary system. Not all members of upper chambers in bicameral systems have the legislative initiative like the members of lower chambers do. Often, each member of the lower chamber has the legislative initiative on its own, whereas most upper chambers can propose acts only as an institution. (E.g. Polish, Czech and Spanish Senate, German Bundesrat, Slovenian National Council). From various regulations of the legislative initiative throughout the world we can see a pattern that upper chambers usually have weaker jurisdiction, comparing to lower chambers. Parliamentary legislative initiative is sometimes also limited to the content of certain acts. The proposal of financial acts in some countries (e.g. Great Britain, Canada, Australia, France, Ireland, and Russia) is in the sole domain of the executive branch.

Article 97 of the Constitution stipulates the legislative initiative of the National Council as its jurisdiction to request the beginning of the legislative procedure. When the Rules of Procedure of the National Assembly were being adopted in 1993, a question about Article 97 of the Constitution arose whether it determines legislative initiative or something else, because Article 88 of the Constitution stipulates that acts are proposed by the Government, a member of the National Assembly or 5000 voters. Since the National Council is not mentioned in that article, different interpretations surfaced, one of them was that Article 97 does not determine the legislative initiative, because it is regulated in Article 88 of the Constitution. However, both provisions are not alike. It was later considered, that Article 97 can be understood as a legislative initiative, because otherwise, the first indent of this article would be incomprehensible. The right to legislative initiative actually derives from the constitutional position of the National Council.⁵⁸

58 Grad, F.: Parlament in vlada, o.c., p. 263.

šteli v zakonodajni postopek v širšem pomenu.⁵⁹ Prejšnji Poslovnik Državnega zbora je zakonodajno iniciativo urejal, vendar ni določal začetka zakonodajnega postopka. Veljavni Poslovnik Državnega zbora pa je v nasprotju s prejšnjim natančno določil, kdaj se zakonodajni postopek začne. Ta se začne, ko predsednik Državnega zbora posreduje predlog zakona vsem poslancem, s čimer je opravljena tudi prva obravnava zakona.⁶⁰ Namen te določbe je, da izloči tiste predloge zakonov, ki ne izpolnjujejo vseh zahtev Poslovnika in jih predlagatelj tudi po naknadnem pozivu ne dopolni. Zakonodajna iniciativa Državnega sveta v skladu s Poslovnikom še ne pomeni, da ima Državni svet vlogo v začetni fazi zakonodajnega postopka, saj se ta začne šele s prvo obravnavo zakona v Državnem zboru.

Kljub temu, da je zakonodajna iniciativa zelo pomembna pristojnost Državnega sveta in da ima lahko Državni svet zaradi interesne sestave v inicialni fazi zakonodajnega postopka veliko pobud, ki izvirajo iz njegove interesne pogojenosti⁶¹, v praksi ta ne vplaga veliko zakonodajnih iniciativ. V petindvajsetih letih je Državni svet v Državni zbor vložil 48 predlogov zakonov. Od teh je Državni zbor sprejel zgolj sedem zakonov. Državni svet je v zakonodajnem postopku uspel z novelo Zakona o dohodnini, ki jo je Državni zbor sprejel leta 1996, z Zakonom o zagotovitvi sredstev za odpravo posledic zime v letu 1995/1996, z novelo Zakona o gospodarskih družbah iz leta 1998, z novelo Zakona o proizvodnji in prometu s prepovedanimi drogami iz leta 2000, z novelo Zakona o odpravljanju posledic dela z azbestom (vložen leta 2008,

59 V grobem bi torej lahko ločili zakonodajni postopek v širšem in ožjem pomenu, pri čemer bi šteli za zakonodajni postopek v ožjem pomenu postopek sprejemanja zakona v parlamentu, za zakonodajni postopek v širšem pomenu pa še zakonodajno iniciativo. Tako Grad, Franc: *Parlament in vlada*, o.c., str. 202; Odločba US, št. U-I-104/01-17, 14. 6. 2001, obj. v Uradnem listu RS, št. 52/01.

60 Gl. 116. in 121. čl. Poslovnika Državnega zbora.

61 Tako Igličar, Albin, 1994: *Zakonodajno odločanje*, ČZ Uradni list RS, Ljubljana, str. 71.

Does the National Council take part in the legislative procedure with the legislative initiative or not? The theoretical opinion is that it could be considered as the legislative procedure in a broader sense.⁵⁹ The last Rules of procedure of the National Assembly regulated the legislative initiative but did not determine the beginning of the legislative procedure. However, the current Rules of Procedure of the National Assembly precisely stipulate that the proceedings begin when the President of the National Assembly forwards the legislative proposal to all its members, which counts as the first reading⁶⁰. The intention of this provision is to eliminate legislative proposals that do not meet all criteria set out in the Rules of Procedure of the National Assembly and are not complemented by the applicant after a subsequent appeal. The legislative initiative of the National Council in accordance with the Rules of Procedure of the National Assembly does not mean that the National Council plays any role in the beginning of the legislative procedure, since the legislative procedure does not officially begin until the first reading in the National Assembly.

The legislative initiative of the National Council is rarely executed in practice, despite being one of its very important jurisdictions, due to the National Council's specific composition which consists of different interest groups that give initiatives in the initial phases of the legislative procedure.⁶¹ In the last twenty five years the National Council proposed 48 draft laws to the National Assembly, but only seven of them were adopted. In the legislative procedure the National Council succeeded in amending

59 Roughly, we can distinguish legislative procedure in a broader and narrow sense. Legislative procedure in a narrow sense is the procedure of adopting an act in the parliament, whereas to the procedure in broader sense we can also add legislative initiative. Grad, F.: *Parlament in vlada*, o.c., str. 202; Odločba US, št. U-I-104/01-17, 14. 6. 2001, obj. v Uradnem listu RS, št. 52/01.

60 See also 116th in 121st article of the National Assembly Act of Procedure

61 Igličar A.: *Zakonodajno odločanje*, ČZ Official Gazette, Ljubljana, 1994, p. 71



sprejet leta 2009), z novelo Zakona o delnem subvencioniranju polnega delovnega časa, ki jo je Državni zbor prav tako sprejel leta 2009 in z novelo Zakona o funkcionarjih v državnih organih iz leta 2013.⁶² Državni svet je torej uspel s po dvema vloženima zakonodajnimai iniciativama v prvem, drugem in četrtem mandatu ter z eno v petem.

Nizka stopnja uspeha pri vloženih zakonodajnih iniciativah Državnega sveta ni posledica slabše kakovosti predlogov zakonov Državnega sveta, ampak predvsem prakse politične večine v Državnem zboru, ki redko dopušča opoziciji, da uspe z zakonodajnimi predlogi, kaj šele, da bi takšen uspeh dopustila Državnemu svetu. V Državnem zboru večina praviloma zavrne takšne predloge in počaka, da podobno zakonodajno iniciativo vloži Vlada, saj politična večina v tem primeru sprejme vladni predlog zakona. Ne glede na to, da je zakon končno sprejet na predlog Vlade in ne na predlog Državnega sveta, je pomembno, da je dobra ideja in vsebina, ki jo v predlogu zakona predlaga Državni svet, uveljavljena v slovenskem pravnem redu.

Takšnih primerov je več. Državni svet je leta 2012 v zakonodajno proceduro vložil predlog novele Zakona o zdravstvenem varstvu in zdravstvenem zavarovanju, s katerim je predlagal ukinitve možnosti odpisa, delnega odpisa, odloga ali obročnega odplačevanja prispevkov za obvezno zdravstveno zavarovanje. Na seji Državnega sveta je ob obravnavi omenjene zakonodajne iniciative Ministrstvo za zdravje izrazilo podporo temu predlogu, nato pa Vlada na seji Odbora Državnega zbora za zdravstvo predlogu zakona ni več izrekla podpore. Sprejet je bil

62 Podatki izhajajo iz letnih poročil in poročil o delu Državnega sveta, ki so dostopni na URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. Glej tudi Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

the Personal Income Tax Act that was adopted in 1996, the Act Concerning Granting Means for Remedying the Consequences of Winter in 1995/1996, the Companies Act in 1998, the Production of Trade and Illicit Drugs Act in 2000, the Act Concerning Remedying the Consequences of Work with Asbestos (proposed in 2008, adopted in 2009), the Partially subsidizing of full-time work Act, also adopted in 2009, and in amending the Officials in the State Administration Bodies Act in 2013.⁶² The National Council therefore succeeded in two law proposals in its first, second and forth mandate, and in one proposal in its fifth mandate.

The rare application of the legislative initiative instrument of the National Council is not a result of bad quality of its proposals, but rather of the nature of National Assembly's majority system that rarely allows passing of the laws that have been proposed by bodies that can influence the parliament's legislative jurisdiction, such as the opposition and even less the National Council. In the National Assembly, the majority usually refuses such proposals and waits for the Government to propose similar draft laws. Only afterwards do they consider adopting them. Whether the law is adopted on Government's or National Council's initiative, the important thing is that the idea and content of the Council's initial, yet not passed draft law become a part of the Slovenian legal system.

For example, the National Council proposed an amendment of the Health Care and Health Insurance Act in which the possibility of cancellation, partial cancellation,

62 The data is gathered from the annual reports and reports on activities of the National Council, available at: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. See also Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

sklep, da predlog zakona ni primeren za nadaljnjo obravnavo. Navkljub takšni odločitvi je malo za tem Vlada identični predlog sprememb vključila v Predlog zakona za uravnoteženje javnih financ, ki ga je Državni zbor sprejel še isto leto.

Državni svet je leta 2010 predlagal novelo Zakona o odvzemu in presaditvi delov človeškega telesa zaradi zdravljenja. Predlog zakona je temeljil na pregledni uzakonitvi sistema domnevne privolitve darovalca za primer odvzema delov človeškega telesa po smrti. Državni zbor je istega leta sprejel sklep, da predlog zakona ni primeren za nadaljnjo obravnavo. S predlogom Zakona o pridobivanju in presaditvi delov človeškega telesa zaradi zdravljenja, ki ga je v obravnavo Državnemu zboru predložila Vlada leta 2015, se je med drugim dopolnilo področje privolitve v darovanje (izrecna pisna privolitev ali izrecno nasprotovanje darovanju delov telesa) in popravilo do sedaj nejasno ureditev t. i. domnevne privolitve. S sprejemom tega zakona v letu 2015 se je delno upoštevalo napore Državnega sveta izpred let.

Državni svet je leta 2014 vložil v zakonodajni postopek predlog novele Zakona o zdravilih. Matični Odbor Državnega zbora za zdravstvo je sicer ob obravnavi predloga zakona sprejel sklep, da slednji ni primeren za nadaljnjo obravnavo, vendar je bila napovedana ureditev omenjene problematike v okviru priprave novega zakona o lekarniški dejavnosti. Slednje se je nato tudi realiziralo s sprejemom Zakona o lekarniški dejavnosti⁶³ v letu 2016. Predlog Državnega sveta je bil torej upoštevan s sprejemom drugega zakona, ki pa ga je predlagala Vlada.

Razlogov za prej omenjeno redko uporabo instituta zakonodajne iniciative je sicer več. Člani Državnega sveta niso zaposleni v Državnem svetu, tako da svojo funkcijo opravljajo nepoklicno. To pomeni, da člani kot

63 Zakon o lekarniški dejavnosti, Uradni list RS, št. 85/16.

postponement or payment in installments of the compulsory health insurance contributions was abolished. On the National Council's session the Ministry of Health was in favor of the proposal, but on the following National Assembly's Committee of Health Care session, the Government declined its support for the proposition. It was concluded that the amendment was not fit for further discussion. Despite such decision the Government included an identical amendment in its draft law of the Fiscal Balance Act that was adopted the same year by the National Assembly.

In 2010 the National Council proposed an amendment regarding the Act Regulating the Removal and Transplantation of Human Body Parts for the Purposes of Medical Treatment. It was based on an enactment of the system of implied consent of the donor in case of transplantation of human body parts after death. The National Assembly concluded in the same year that the proposition was not fit for further discussion. In 2015 the Government proposed the Act Regulating the Obtaining and Transplantation of Human Body Parts for the Purposes of Medical Treatment in which the area of donor consent was renewed (express written consent or express opposition to organ transplant) and the unclear system of implied consent was corrected. The National Assembly adopted the law in 2015 and the previous work of the National Council was partially enacted.

In 2014 the National Council proposed another amendment, this time concerning the Medicinal Products Act. The National Assembly's Committee of Health concluded that the proposal was not fit for further discussion, but at the same time the promise for regulation of problems concerning pharmaceutical services was made. A new Pharmacy Services Act⁶³ was adopted in 2016. The Na-

63 Pharmacy Services Act, Uradni list RS, št. 85/16.





predstavniki določenih interesov ohranjajo stik z delovnim področjem interesa, ki ga zastopajo, in še naprej opravljajo svoj poklic, ki so ga opravljali do izvolitve v funkcijo državnega svetnika. Takšno opravljanje funkcije jim onemogoča, da bi se popolnoma predali funkciji člana Državnega sveta, ampak to funkcijo opravljajo v popolnanskem času oziroma izven svojega rednega delovnika. Njihovo delo v Državnem svetu je osredotočeno predvsem na spremljanje predlagane zakonodaje in opozarjanje na pomanjkljivosti in napake v okviru pristojnosti, s katerimi Državni svet razpolaga. Priprava predloga zakona je zahtevno opravilo, ki zahteva veliko vložnega časa, in energije, s katerima člani Državnega sveta zaradi nepoklicnega opravljanja funkcije ne razpolagajo v zadostni meri.

Poleg tega Državni svet v strokovni službi nima veliko zaposlenih, ki bi lahko spremljali stanje na določenih področjih in predlagali spremembe zakonodaje. Priprava zakona pa je zahtevno opravilo, ki zahteva oceno stanja in razloge za sprejem zakona, cilje, načela in poglobljene rešitve predloga zakona, oceno finančnih posledic predloga zakona za državni proračun in druga javna finančna sredstva, prikaz ureditve v drugih pravnih sistemih in prilagojenost predlagane ureditve pravu Evropske unije, presojo administrativnih posledic, posledic na okolje, ki vključuje tudi prostorske in varstvene vidike, posledic na gospodarstvo in na socialnem področju, presojo posledic glede na dokumente razvojnega načrtovanja ter prikaz sodelovanja javnosti pri pripravi predloga zakona. Priprava predloga zakona, ki bo izpolnjeval vse pogoje iz Poslovnika Državnega zbora, terja ogromno dela, znanja, časa, sodelovanja znotraj službe in med različnimi organi države. Kot že navedeno, je predvsem Vlada tista, ki je najbolj usposobljena za pripravo in vlaganje zakonodajnih iniciativ v Državni zbor.

Poleg tega je pomembno poudariti, da člani Državnega sveta ne vlagajo samo pobude za zakonodajne iniciative v

tional Council's proposal was therefore indirectly regarded, but once again the initiative came from the Government.

As mentioned, there are several reasons for the rare application of the legislative initiative instrument. National Councilors do not perform their functions on a professional basis. As the representatives of various interest groups, they maintain contact with the people and interests they represent while continuing to perform their original profession. Hence, they are unable to focus entirely on performing their official duties. Their work within the National Council is concentrated on monitoring the area of interest they represent and drawing attention to errors, which is the traditional role of upper chambers within an incomplete bicameral system. Preparation of draft laws is a demanding and time consuming task and lack of the latter is one of the reasons for the rare National Council law initiatives.

Another reason is the small size of the National Council's expert services, which are unable to provide Members of the National Council with sufficient legal assistance in the preparation of legislation. As previously said, preparation of laws is not an easy task, it demands recognition and assessment of the current status and reasons for adopting the law, goals, principles and main solutions for the proposal of the act, assessment of the financial consequences for the state fiscal budget and other national financial sources, the view on other comparable legal systems and accordance with the European legal system, assessment of administrative, environmental, economic and social consequences, consequences on development planning and view on public participation in preparation of the proposal. Proposal which ought to be in accordance with the Rules of Procedure of the National Assembly takes a lot of work, time, knowledge and cooperation within the Council itself and also between different bodies of the state, especially the Government which is most suitably qualified for legislative initiatives.

Državnem svetu, pač pa vlagajo tudi pobude za zakonodajne iniciative neposredno na Vlado in ministrstva. Takšna pobuda je lahko celo bolj uspešna kot pobuda, ki jo predložijo v obravnavo Državnemu svetu. Če se Vlada odloči prevzeti zakonodajno iniciativo na pobudo člana Državnega sveta, je zaradi večine, ki jo ima v Državnem zboru, velika verjetnost, da bo takšna zakonodajna iniciativa tudi sprejeta.

Državni svet je na primer leta 2008 podprl pobudo dveh članov za čimprejšnjo vložitev Predloga zakona o duševnem zdravju v zakonodajni postopek. Na nujnost sprejema zakona, ki bi osebam s težavami v duševnem zdravju zagotovil enakopraven in enakovreden položaj v družbi, so dolga leta opozarjali svojci oseb s težavami v duševnem zdravju in nevladne organizacije tudi na posvetih v Državnem svetu. Predlog zakona je Vlada vložila v zakonodajni postopek istega leta in zakon je Državni zbor sprejel po več letih priprav in usklajevanj z medicinsko stroko in uporabniki.

Na predlog člana Državnega sveta je bila leta 2015 ob podpori Državnega sveta Vladi dana pobuda za sprejem novele Zakona o pacientovih pravicah, v okviru katere je član predlagal, da se ustrezneje uredi sistem izvajanja nalog zastopnikov pacientovih pravic. V letu 2017 je ministristvo pripravilo novelo tega zakona, v kateri je omenjeno pobudo tudi upoštevalo.

Kljub temu, da veljavni Poslovnik Državnega zbora določa, da se zakonodajni postopek začne s posredovanjem zakona poslancem, menim, da zakonodajna iniciativa predstavlja uvodno dejanje, s katerim je sprožen zakonodajni postopek, saj gre za pristojnost, ki je v celoti vezana na zakonodajni postopek. Prav tako menim, da je Državni svet sposoben pripraviti več zakonodajnih iniciativ primernih za vložitev v zakonodajni postopek v Državni zbor. Pri tem mora Državni svet izkoristiti predvsem znanje članov Državnega sveta in njihovo strokovno podporo na področju interesov, ki jih predstavljajo. Ideje

It is also important to emphasize that the members of the National Council not only propose legislative initiatives inside the National Council itself, but they also propose them directly to the Government and Ministries. Such initiatives can even be more efficient than ones proposed inside the Council. If the Government decides to pass the proposal on to the National Assembly, the majority they hold provides a greater chance of adopting such legislative proposal.

In 2008, for example, the National Council supported an initiative of two of its members that requested prompt passing of the Mental Health Act into the legislative process. The necessity of adopting such an act, which would ensure equality and equivalence to people with mental health issues, has been for many years repeatedly emphasized by relatives of such individuals and non-government organizations at the National Council's meetings. The proposition was passed to the legislative process the same year by the Government and the National Assembly adopted it after long years of preparations and coordination with the medical profession and users.

With the support of the National Council in 2015, one of its members made a proposal to the Government, concerning adoption of amendment to the Patient Rights Act in which the tasks of patient's rights representatives should be properly regulated. In 2017 the Ministry prepared such amendment to the law in which the Council's proposal was considered.

Although the Rules of Procedure of the National Assembly determine that the legislative procedure starts with the forwarding of the draft of the new law to the deputies, I believe it is the legislative initiative that poses an introductory action, which *de iure* starts the legislative process, because this jurisdiction is the first one that is fully tied to the legislative procedure. I also believe that the National Council is capable of preparing more legislative initiatives



za pripravo zakonodajne iniciative lahko ta pridobi tudi iz posvetov in javnih razprav, ki jih organizira in na katerih strokovnjaki izpostavljajo napake ter slabe rešitve na področju zakonodaje. Državni svet bi lahko pripravil manj zahtevne predloge zakonov, ki bi predvidevale spremembo enega ali zgolj nekaj členov. Tudi za takšne zakone velja, da morajo vseeno vsebovati vse navedene kriterije, ki jih določa Poslovnik Državnega zbora, vendar je nabor nujnih podatkov za pripravo predloga zakona obvladljiv, zaradi česar bi lahko imel tudi Državni svet možnost pripraviti kvaliteten predlog zakona. Tak zakon bi Državni zbor težko zavrnil, saj bi se z njim rešila pereča problematika, ki jo izpostavljata civilna družba ali strokovna javnost v medijih.

13.2. Pristojnost amandmiranja zakonov

Pravica do vlaganja amandmajev je pomembna pristojnost drugih domov, s katero se udeležujejo v zakonodajnem postopku. V nasprotju z zakonodajno iniciativo, ki sproži zakonodajni postopek, je pravica do spreminjanja zakona nedvomno že ena izmed faz v okviru zakonodajnega postopka. Drugi dom lahko z izvrševanjem omenjene pravice pomembno vpliva na vsebino zakonov, ki jih sprejema parlament. Vendar pa je še bolj kot to pomembno, kakšno vlogo ima drugi dom v postopku usklajevanja zakonskega besedila s prvim domom.

Pravica drugega doma vlagati amandmaje tekom zakonodajnega postopka ni značilna za države z dvodomnim parlamentarnim sistemom. V primerljivih ureditvah drugi domovi namreč predlogov za spremembo zakona ne morejo podati, dokler prvi dom ne zaključi z obravnavo zakona v celoti. Pri tem velja opozoriti, da v državah s simetrično dvodomnostjo prvi dom tudi ne posega v postopek sprejemanja zakona v drugem domu, ko ta odloča o zakonodajnem predlogu prvi. Velja torej, da nobena zbornica zakonodajnega telesa praviloma ne

that are suitable for passing on to the National Assembly's legislative process. In order to achieve that, the National Council should rely on knowledge and expertise its members possess, due to their interest group origin. Ideas for legislative initiative preparation should derive from public discussions and consultations that are organized by the National Council, at which experts point out errors and poor solutions in the legislative area. The National Council could prepare less complicated law proposals that involve changing of only one or few articles. Even such laws would be submitted to the criteria demanded by the Rules of Procedure of the National Assembly, with a slight distinction; the management of law's necessary components would be easier and consequently National Council's law proposals would be of better quality. Therefore the National Assembly would less likely refuse such proposal, for it would pose a solution to a pressing issue, pointed out by the civil society or expert public in the media.

13.2. Jurisdiction of amending acts

The right to file an amendment is an important jurisdiction of second chambers within a bicameral system, with which they take part in the legislative process. Contrary to the legislative initiative that only starts the legislative process; the right to amend laws is definitely one of the process' inner phases. Execution of this right grants the second chamber a direct influence on the law's content. Even more important is the second chamber's role in the text coordination procedure in which they collaborate with the first chamber.

Second chamber's right to file an amendment during the legislative process is not typical for countries that have a bicameral parliamentary system. In other comparable systems, second chambers cannot file proposals for law changing until the first chamber concludes their reading

posega v delo druge zbornice, dokler slednja ne sprejme dokončne odločitve.

Državni svet nima pristojnosti vlaganja amandmajev na zakone, saj ne more vložiti amandmaja niti tekom zakonodajnega postopka v Državnem zboru, niti v postopku sprejemanja suspenzivnega veta niti kasneje v postopku ponovnega odločanja o zakonu v Državnem zboru.

Državni svet si vseskozi prizadeva za spremembo ureditve veta in postopka ponovnega odločanja o zakonu na način, ki bi Državnemu svetu v okviru veta omogočal predlaganje posameznih amandmajev. Več o tem bo pojasnjeno v delu, kjer bo obravnavana pristojnost suspenzivnega veta.

Državni svet je v preteklosti večkrat predlagal, da naj se mu podeli pristojnost vlaganja amandmajev med zakonodajnim postopkom v Državnem zboru. Spremembo ali dopolnitev zakona bi po tem predlogu lahko Državni svet v drugi obravnavi predložil v obravnavo na matičnem delovnem telesu Državnega zbora. V tem primeru gre za povsem drugačno idejo od prej navedene, saj ne gre za spreminjanje zakona v postopku ponovnega odločanja o zakonu, ampak za pristojnost spreminjanja zakona v okviru druge obravnave na matičnem delovnem telesu.

O pristojnosti Državnega sveta vlagati amandmaje na zakon med zakonodajnim postopkom v Državnem zboru je v preteklosti odločalo tudi Ustavno sodišče. Postopek pred Ustavnim sodiščem je bil sprožen na pobudo Državnega sveta, ki je zatrjeval, da po načelu „a maiore ad minus“ pravica predlagati zakone vsebuje tudi pravico do vlaganja amandmajev k zakonom. Pristojnost zakonodajne iniciative naj bi bila po mnenju Državnega sveta močnejša pravica in naj bi vključevala tudi šibkejšo pravico, ki jo predstavlja možnost spreminjanja zakonov. Ustavno sodišče⁶⁴ je zahtevo Državnega sveta zavrnilo,

64 Gl. odločbo US, št. U-I-84/96, z dne 21. 10. 1999, obj. v Uradnem listu RS, št. 95/99.

of the law. It is important to point out, that in states with symmetrical bicameral systems the first chamber does not interfere with the legislative process inside the second chamber, if the latter is the first one deciding on the law proposal. The rule is that none of the chambers may interfere with the work of the other chamber, until their final decision about the matter is made.

The National Council does not have a jurisdiction to file amendments to laws, for they cannot file them during the legislative process inside the National Assembly; nor in the process of filing the suspensory veto, nor in the latter reconsideration of the law procedure inside the National Assembly.

Changing of the veto and law reconsideration system in a way that would allow the National Council to file amendments has been one of the Council's ambitions for a long time. More on this topic will later be explained in jurisdiction to veto section.

In the past, there were many suggestions by the National Council that they ought to be given the jurisdiction to amend laws during the legislative process. Considering that suggestion and being given that jurisdiction, the National Council could change or supplement laws during the second reading of the legislative process, by submitting them to the responsible working body of the National Assembly. In this case the situation differs from the previous one (the mentioned jurisdiction to change laws within the reconsideration procedure), for it is not changing the law in the law reconsideration process, but the jurisdiction to change the law during the second reading inside the responsible working body.

Jurisdiction to file amendments has in the past been subjected to juridical reviews of the Constitutional Court. The initiative to begin proceedings was filed by the National Council, which claimed that by the principle “a maiore ad minus” the right to propose laws also contains a right to

saj Ustava ne določa pravice Državnega sveta do vlaganja amandmajev k zakonom. Pristojnost Državnega sveta, da predlaga Državnemu zboru sprejem zakonov, namreč po mnenju Ustavnega sodišča ne vključuje tudi pristojnosti vlaganja amandmajev, saj gre za dve različni dejanji v zakonodajnem postopku. Državni zbor ima namreč pravico, da avtonomno uredi vprašanje, kdo lahko vlaga amandmaje, s katerimi se spreminja zakonski predlog.

Ločeno odklonilno mnenje v tej odločbi je podala ustavna sodnica Milojka Modrijan. Po njenem mnenju bi moral Poslovnik Državnega zbora Državnemu svetu dopustiti tudi vlaganje amandmajev k zakonom, katerih predlagatelj ni Državni svet. Po veljavni poslovniški ureditvi lahko Državni svet vlaga amandmaje v okviru obravnave na matičnem delovnem telesu le v tretji obravnavi predloga zakona, kadar je sam predlagatelj zakona. Gre torej za pristojnost vlaganja amandmajev, ki pripada vsem predlagateljem zakonov in ne za posebno pristojnost Državnega sveta. Po mnenju ustavne sodnice bi lahko Državni svet prek amandmiranja v teku zakonodajnega postopka aktivno sodeloval v tem, kar ne nazadnje pomeni, da bi na tak način neposredno uveljavljal interese, ki jih po Ustavi predstavlja.

Ne glede na predstavljeno ustavno in poslovniško ureditev in ne glede na odločbo Ustavnega sodišča, Državni svet v praksi predlaga amandmaje v drugi obravnavi predlogov zakonov v delovnih telesih med potekom zakonodajnega postopka v Državnem zboru. Te amandmaje večinoma vključi v mnenja, ki jih lahko, v skladu s 97. členom Ustave, daje Državnemu zboru in njegovim delovnim telesom. Vendar Državni zbor in njegova delovna telesa teh amandmajev ne morejo obravnavati kot amandmaje Državnega sveta, ampak jih lahko obravnavajo samo, če jih povzame delovno telo Državnega zbora ali posamezen poslanec oziroma poslanska skupina, kar se pogosto tudi dogaja. Več o tem v nadaljevanju, ko bo obravnavana pristojnost dajanja mnenj.

file amendments to laws. Legislative initiative, on Council's opinion, represents a stronger right that includes a weaker one, thus the right to change laws. The Constitutional Court⁶⁴ refused the initiative, reasoning that the referred right is not granted by the Constitution. The jurisdiction to propose laws to the National Assembly does not include a jurisdiction to file amendments, because the two represent different actions that are not in any way similar to one another inside the legislative process. The National Assembly alone holds the right to autonomously decide who can file amendments by which the law proposals are changed.

A dissenting opinion to the same ruling was given by the Constitutional Court Judge Milojka Modrijan. In her opinion, the Rules of Procedure of the National Assembly should allow the National Council to file amendments to laws that were not proposed by the National Council itself. Currently, the National Council can file amendments at responsible working bodies' sessions only within the third reading of the law proposal, under condition they were the ones proposing it. This jurisdiction belongs to every law proposing body and it is not an explicit jurisdiction of the National Council alone. If the latter had such a jurisdiction, they could actively participate within the legislative process, meaning they would directly perform their interest driven function, determined by the Constitution.

In practice, not considering the constitutional and procedural organization, nor the Constitution Court's ruling, the National Council proposes amendments within the second reading of law proposals inside the responsible working bodies during the legislative process in the National Assembly. These amendments are mostly part of the Council's opinions, that can be, by Article 97 of the Constitution of the Republic of Slovenia, given to the

64 See ruling C.C., no. U-I-84/96, from 21. 10. 1999, pub. Official Gazette, no. 95/99.

13.3. Suspenzivni veto

Zelo pomembna pristojnost, s katero razpolagajo nekateri drugi domovi nesimetričnih dvodomnih sistemov (npr. češki, irski, španski in poljski Senat, avstrijski in nemški Zvezni svet, britanska Lordska zbornica),⁶⁵ je suspenzivni veto. Obstajata dve vrsti veta - absolutni in suspenzivni veto. Absolutni veto ni institut, ki bi ga poznali sistemi nesimetrične dvodomnosti, saj predstavlja zelo močno pristojnost. Z absolutnim vetom namreč lahko drugi dom blokira odločitev prvega doma, zato ta institut obstaja le v sistemih simetrične dvodomnosti. V nesimetričnih dvodomnih sistemih pa, tako kot v slovenskem ustavnem sistemu, drugi dom razpolaga le z odložilnim ali suspenzivnim vetom.

Postopek ponovnega odločanja je v slovenski Ustavi urejen zelo nenavadno. Ustava namreč v dveh odstavkih 91. člena ureja dve povsem različni vprašanji. V prvem odstavku ureja razglasitev zakona (t. i. promulgacijo), v drugem pa postopek ponovnega odločanja o zakonu oziroma t. i. suspenzivni veto Državnega sveta.⁶⁶ Državni svet lahko v sedmih dneh od sprejetja zakona in še pred njegovo razglasitvijo zahteva, da Državni zbor o njem še enkrat odloča. Po izglasovanju veta v Državnem svetu se obravnava zakona nadaljuje v Državnem zboru, ki ponovno odloča o zakonu. Pri ponovnem odločanju mora za sprejem zakona glasovati večina vseh poslancev, razen če Ustava za sprejem obravnavanega zakona določa večje število glasov. Ponovna odločitev Državnega zbora je dokončna.

Zakonodajni postopek torej ni končan vse dokler ne preteče sedemdnevni rok za vložitev veta, saj Državni svet s suspenzivnim vetom posega v zakonodajni postopek.

65 Do ukinitve leta 2001 je imel pristojnost veta tudi Županijski dom na Hrvaškem.

66 Ustava ureja veto še v tretjem odstavku 97. člena, kjer so našteje pristojnosti Državnega sveta.

National Assembly and its responsible working bodies. In cases as such the latter cannot treat these amendments as National Council's amendments, but can only treat them if the responsible working body, National Assembly deputy or parliamentary group adopts them as their own, which is a frequent practice. More about that in the jurisdiction of giving opinions section.

13.3. Suspensory veto

A very important jurisdiction that is granted to some second chambers in asymmetrical bicameral systems (e.g. Czech Republic, Irish, Spanish, Polish Senate, Austrian and German Federal Council/ Bundesrat, British House of the Lords),⁶⁵ is the suspensory veto. There are two types of a veto – absolute and suspensory veto. Because of its strength, the absolute veto is not an institute that is typical for the asymmetrical bicameral systems. It can be used by the second chamber to block first chamber's decisions, so it is only used in the symmetrical bicameral systems. In asymmetrical bicameral systems, like the one in Slovenia, the second chamber only has the suspensory veto jurisdiction.

There are some problematic views on the law reconsideration procedure regulation in the Constitution. Article 91 of the Constitution consists of two paragraphs with two completely incoherent issues. The first paragraph regulates the promulgation of the law; the second one regulates the law reconsideration process, which is a consequence of the filed suspensory veto of the National Council.⁶⁶ The latter can, within seven days since the law's adoption and before its promulgation, request, that the National Assembly reconsiders its decision of adopting the law. After the

65 Until its abolishing in 2001, Croatian Županijski dom also had the veto jurisdiction.

66 The veto is also regulated in Article 97, paragraph 3 of the Constitution, under National Council's jurisdiction list.

Državni zbor je dolžan o zakonu ponovno odločati in šele po ponovnem odločanju, ko je zakon sprejet ali zavrnjen, je zakonodajni postopek končan. Glede na pravno posledico suspenzivnega veta, je do izteka roka za njegovo vložitev odločitev Državnega zbora o sprejemu zakona pogojna.

13.3.1. *Rok za vložitev veta*

Poudariti je treba vrsto izzivov, s katerimi se Državni svet sooča pri obravnavi veta.⁶⁷ Najprej je treba poudariti kratek, sedemdnevni rok za proučitev zakona, ki je na voljo Državnemu svetu. Ta rok je izmed vseh rokov, ki so na voljo drugim domovom v Evropi s pristojnostjo veta, zagotovo najkrajši (npr. češki in poljski Senat imata rok mesec dni, avstrijski Zvezni svet osem tednov, španski Senat dva meseca).

Poleg tega pa imajo v praksi člani Državnega sveta na razpolago manj kot sedem dni za vložitev veta. Rok namreč ne začne teči takrat, ko zakon prejme Državni svet, pač pa naslednji dan po sprejemu zakona v Državnem zboru. Ob tem je treba dodati, da lahko nekaj časa poteče tudi zaradi priprave končnega besedila zakona v Državnem zboru. V končno besedilo zakona je namreč treba vnesti morebitne amandmaje, ki so bili sprejeti v tretji obravnavi, in zakon redakcijsko pripraviti, preden sprejeti zakon službe Državnega zbora pošljejo v Državni svet. Opozoriti je treba tudi na to, da je ponavadi seja Državnega sveta, na kateri se odloča o suspenzivnem vetu, šesti dan po sprejetju zakona v Državnem zboru, tako da imajo člani Državnega sveta časa za odločitev, ali bodo predlagali veto na zakon ali ne, le tri ali štiri dni.

Poslovnik Državnega sveta ravno zaradi kratkega, sedemdnevnega roka ne omejuje članov Državnega sveta,

67 Več o tem, tudi o problematiki ureditve veta, glej Štrus, Dušan, 2002: Odložilni veto Državnega sveta Republike Slovenije, Pravnik, Ljubljana, let. 57 (2002), 4–5, str. 293–315.

veto has been voted inside the National Council, the law reconsideration continues within the National Assembly. In the second consideration, the majority of all deputies must be reached, unless the Constitution states that greater majority is needed for adopting this type of law. Law reconsideration effects are final and cannot be undone.

The legislative process is therefore not completed until the seven day period for filing the veto expires. Reason for that is veto's power to interfere and allow correcting possible mistakes that have been made in the legislation process. The National Assembly must reconsider its decision and only after another consideration of the law, after the veto is whether adopted or rejected, the legislative procedure is concluded. Considering the consequence of the suspensory veto, National Assembly's first law adoption has a nature of a conditional decision, that is, until the seven day period passes.

13.3.1 *Period for filing the veto*

The National Council faces numerous challenges that must be pointed out when deciding on whether using the veto or not.⁶⁷ Firstly, the short seven day period for National Council to get acquainted with the new law, should be brought to attention. This period is by far the shortest compared to all periods that other European chambers with veto jurisdiction have (e.g. Czech and Polish Senate have a month long period, Austrian Federal Council has eight weeks, Spanish Senate has two months).

Furthermore, in practice, National Councilors effectively have less than seven days to file the veto. The period does not start when the National Council receives the law into consideration, but as soon as a day after the National

67 More on the topic, see Štrus, D.: Odložilni veto Državnega sveta Republike Slovenije, Pravnik, Ljubljana, let. 57 (2002), 4–5, p. 293–315

da morajo vložiti pobudo za veto v roku, ki je še krajši od sedmih dni, ne glede na to, da je praksa dejansko taka. Člani lahko teoretično vložijo veto tudi sedmi dan po sprejemu zakona, pri čemer mora predsednik Državnega sveta sklicati sejo Državnega sveta istega dne, vendar je pri takšnem načinu delovanja vprašljiva sklepčnost na seji Državnega sveta ravno zaradi nepoklicnega opravljanja svetniške funkcije. V praksi se v primeru, ko član Državnega sveta napove zbiranje podpisov za podporo vetu ali ko napove, da bo takšno pobudo podal na komisiji ali interesni skupini, o tem obvesti tudi ostale člane Državnega sveta in določi predviden datum sklica izredne seje Državnega sveta. Na ta način se člane Državnega sveta že vnaprej obvešča o napovedi vložitve veta in omogoča, da si člani Državnega sveta rezervirajo čas za sejo v primeru, da bo predlog odločilnega veta dejansko vložen v proceduro.

13.3.2. *Prekrivanje različnih ustavnih rokov*

Največ težav pri urejanju institutov odločilnega veta, referendum in promulgacije predstavlja ureditev njihovih rokov. Nenavadno je namreč, da slovenska Ustava ureja pristojnost veta Državnega sveta s časovno omejitvijo v členu, ki govori o razglasitvi zakonov, saj gre za dva povsem različna instituta. Sedemdnevni rok Državnega sveta za vložitev veta je najdaljši možni rok znotraj osem dnevnega roka, ki ga ima za razglasitev zakona na voljo Predsednik republike. V ustavah drugih držav časovna omejitev vložitve veta ni zajeta v rok za razglasitev zakona, ki ga ima na voljo šef države, ampak začne rok za razglasitev zakona teči šele po tem, ko je zakon sprejet v obeh domovih.

Prekrivanje teh dveh rokov pomeni tudi različno določanje roka za razglasitev zakona, ki je na voljo Predsedniku republike. Če Državni svet ne vloži odločilnega veta na zakon, se osemdnevni rok Predsednika republike izteče brez prekinitve, vendar pa je vanj vključen tudi

Assembly adopts it. It also should be pointed out that some time can also pass in order to prepare the final draft of the law inside the National Assembly after its adoption. The final draft must contain possible amendments that were only accepted within the third reading of the law, and it should also be properly edited before it is sent to the National Council. Another fact is that usually the session of the National Council, which is dedicated to veto decision, takes place on the sixth day after the adoption of the law within the National Assembly. Therefore, National Councilors only have three or four days to decide whether to suggest the veto or not.

Because of the initially short seven day period for filing the veto, the Rules of procedure of the National Council do not state that Councilors should file such initiative within a period that is shorter than that. Members can, in theory, file the veto on the seventh day after the law adoption, considering that the president of the National Council must call for the convocation of a session on the same day. The problem with that is in reaching a quorum for making lawful decisions, for the members of the National Council do not perform their functions on a professional basis and are therefore not "on call". In practice, when a Councilor calls for signature collection to support the veto or when he plans on giving such an initiative to the commission or an interest group, other members are notified and a date for an extraordinary session of the National Council is set. This way, members anticipate a possible session, that must be attended and there is a greater chance for the quorum to be reached.

13.3.2. *Overlapping of different constitutional periods*

Most problems in the system of suspensory veto, referendum and promulgation derive from their time period regulations. It is unusual that the Constitution of the



sedemdnevni rok Državnega sveta za vložitev odločilnega veta. Predsedniku republike za razglasitev zakona v tem primeru ostane samo en dan. Če Državni svet vloži odločilni veto na zakon, se osemndnevni rok za podpis zakona pomakne na konec »druge« odločitve Državnega zbora. V tem primeru ima Predsednik republike za razglasitev zakona na razpolago osem dni in ne le enega dneva.

Rok za vložitev odločilnega veta pa ni edini rok, ki teče znotraj roka za razglasitev zakona. Tudi pobudo za razpis zakonodajnega referendumu je treba vložiti v roku sedmih dni od sprejema zakona, kar pomeni, da se ti roki na eni strani prekrivajo in na drugi dopolnjujejo. Sedemdnevni rok za vložitev veta in zahteve za razpis referendumu ter osemndnevni rok za promulgacijo zakona začnejo teči istočasno. V primeru, ko Državni svet vloži veto, mora Državni zbor o zakonu ponovno odločati. Če Državni zbor v postopku ponovnega odločanja zakon sprejme, pa začneta zopet teči sedemdnevni rok za vložitev pobude za razpis referendumu in osemndnevni rok za razglasitev zakona. V primeru, ko je vložena zahteva za razpis referendumu in zakon na referendumu ni zavržen, začne že tretjič teči rok Predsednika republike za podpis zakona.

Kot je bilo že navedeno, bi bilo treba spremeniti ustavno ureditev, ki ureja postopek ponovnega odločanja in jo izločiti iz ustavne določbe, ki ureja razglasitev zakona. Ustavna ureditev 91. člena povzroča težave pri zakonski in morebitni poslovniški ureditvi odločilnega veta, zakonodajnega referendumu in razglasitve zakonov, zato bi bilo v prihodnje dobro premisliti o spremembi te ustavne norme. Ustavno ureditev bi bilo treba spremeniti tako, da bi bil po sprejemu zakona določen rok za vložitev odločilnega veta Državnega sveta, po preteku tega roka bi začel teči rok za vložitev pobude za zakonodajni referendum in šele nato rok za razglasitev zakona. Institut veta, ki je sedaj povsem prepuščen poslovniški ureditvi, je tako pomemben ustavni institut, da bi si zaslužil samostojen

Republic of Slovenia regulates the veto jurisdiction in an article that already regulates law promulgation, for the two represent completely different institutes. The seven day period for filing the veto is the longest possible period within the eight day period for law promulgation by the President of the Republic. In other comparable countries' constitutions the period for filing the veto is not included within the period for law promulgation. The promulgating period only starts after the law has been adopted within both of the chambers.

Additional consequences of overlapping between periods are also two different possibilities for the President of the Republic within the period for law promulgation. If the National Council does not file the veto, the eight day period of the President ends without pauses, but the seven day period of the National Council for filing the suspensory veto is also included in that time. The President therefore only has one day left for the law promulgation, due to the seven day wait for the Council to file the possible veto. If the veto is filed, the eight day time period of the President is delayed until the Council makes its second decision. This way, the President then has the full eight day period to promulgate the law.

The veto filing period is not the only time limitation that runs within the law promulgation period. An initiative for the legislative referendum must also be filed within the seven day period that started running when the law has been adopted, meaning that these periods overlap and complement each other. The seven day veto filing period, initiative for legislative referendum, and the eight day law promulgation period start running at the same moment. In the case that veto is filed, the National Assembly must reconsider the adopted law. If the law is adopted once again in this second procedure, periods for law promulgation and referendum initiative start running from the beginning. In case the initiative for referendum

člen v okviru ustavnih določb o zakonodajnem postopku. Ustava bi torej morala vsebovati vsaj temeljne določbe o zakonodajnem postopku in ne bi smela njegove ureditve v celoti prepuščati Poslovniku Državnega zbora.

13.3.3. *Postopek ponovnega odločanja*

Zaradi pomanjkljive ustavne in zakonske ureditve veta Državnega sveta je postopek za vložitev veta trenutno urejen v Poslovniku Državnega zbora. Glede na to, da predstavlja institut veta pomembno omejitev delovanja Državnega zbora v zakonodajnem postopku, bi moral biti ustrezno urejen v Ustavi, saj gre za pomembno ustavno materijo. Ker ne samo Ustava, temveč tudi Zakon o Državnem svetu tega vprašanja nista uredila, je moral to urediti Poslovník Državnega zbora, ki pa je po svoji temeljni naravi vendarle akt, ki ureja notranje poslovanje Državnega zbora. Z vidika razmerja med ustavnima organoma je nedvomno problematično, da tako pomembno vprašanje razmerij med dvema državnima organoma ureja poslovnik enega izmed njiju, ne da bi imel drugi organ na njegovo vsebino kakršenkoli vpliv.⁶⁸

Ob tem je treba poudariti tudi različen položaj, ki ga ima Državni svet pri obravnavi zakona ali poslovnika. Državni svet lahko predlaga zakon in vloži veto na zakon, vendar ne more predlagati in vložiti veta na Poslovník Državnega zbora. To pomeni, da Državni svet ne more vplivati na vsebino Poslovnika Državnega zbora na enak način kot to velja za zakone in je zaradi tega v slabšem položaju. Ureditev postopka v zvezi z vetom in ponovnim odločanjem o zakonu tako sprejema Državni zbor samostojno, brez možnosti Državnega sveta, da bi predlagal ali odložil sprejem ureditve postopka v zvezi z vetom Državnega sveta.

68 Grad, Franc, 2013: Parlamentarno pravo, o.c., 166–167.

has been filed and the law has been confirmed by the people, the law promulgation period of the President starts running for the third time in one legislative procedure.

As stated, the Constitution should be changed in a section that regulates the reconsideration of the law procedure; also it should be excluded from the law promulgation section. The regulation of Article 91 of the Constitution poses an issue in legal and procedural regulation of the suspensory veto, legislative referendum and law promulgation, therefore this kind of constitutional changes would be more than welcome. The new regulation should aim to time periods following one another, not overlapping each other. That means that after the law has been adopted in the National Assembly, the period for filing the veto would start running, after its end the period for legislative referendum initiative would follow, and only after both of them expiring would the law promulgation period be applicable. The suspensory veto is of such importance, that it should be regulated by the Constitution's legislative section within an independent article, not as it is now – merely a National Assembly's Rules of procedure institute.

13.3.3. *Reconsideration of the law procedure*

Because of lenient regulation of the National Council's veto jurisdiction within the legal and constitutional system, the matter is subjected to National Assembly's Rules of procedure regulation. As mentioned, its importance within the legislation process calls for necessary constitutive regulation of this jurisdiction, especially because of its power to limit the National Assembly's legislative power. Both the Constitution and the National Council Act fail to properly regulate the veto system, so the Rules of procedure of the National Assembly, even though it regulates the work of the National Assembly and not the National Council, has to be the main source of the veto regulation.

Poslovnik Državnega zbora določa celoten postopek ponovnega odločanja in vsaka sprememba tega postopka terja njegovo spremembo, za sprejem katere se zahteva relativna dvotretjinska večina.⁶⁹ Državni zbor, natančneje Komisija Državnega zbora za poslovnik, v aktualnem mandatu obravnava več variantnih predlogov za spremembo postopka ponovnega odločanja. Takšna sprememba poslovniške ureditve z vidika ustavnopravne stroke ni najboljša, vendar je hkrati najbolj verjetna, saj tako sprememba Ustave kot tudi ustrezna zakonska ureditev nista niti na dnevnem redu sej Državnega zbora niti v političnem programu koalicije, ki obvladuje večino v Državnem zboru. V prejšnjih mandatih je Državni svet večkrat podal predlog za spremembo tega postopka v Zakonu o Državnem svetu, vendar predlog nikoli ni prejel zadostne podpore v Državnem zboru.

13.3.4. *Veto na državni proračun*

Posebnost na področju ureditve instituta ponovnega odločanja predstavlja odločanje Državnega sveta o državnem proračunu. Državni svet lahko namreč sprejme mnenje o državnem proračunu, ne more pa nanj vložiti veta. Dokler je zakonodaja predvidevala, da se državni proračun sprejema v obliki zakona, je Državni svet lahko nanj vložil veto, kasneje, ko je državni proračun postal poseben finančni akt, pa ne. Državni svet je zaradi spremembe zakonodaje na področju ponovnega odločanja o državnem proračunu sprožil presojo ustavnosti določb Poslovnika Državnega zbora, ki se nanašajo na postopek v zvezi z obravnavo državnega proračuna. Ustavno sodišče⁷⁰ je menilo, da lahko odločitev o prihodkih in izdatkih države Državni zbor, v skladu s prvim odstavkom 148. člena Ustave, sprejema kot proračun in mu

69 Gl. 94. člen Ustave Republike Slovenije.

70 Tako Odl. št. U-I-40/96 z dne 3. aprila 1997.

This poses an issue, because the Rules of Procedure are an act that should only concern the National Assembly, for they are the ones adopting it, and therefore the Council has no jurisdiction in affecting its content, even though the veto matter is of great importance.⁶⁸

Moreover, the position of the National Council concerning the questions of proposing and vetoing the law or the rules of procedure should be brought to attention. The Council can propose and veto a law, but they cannot propose or veto the Rules of Procedure of the National Assembly, which regulate the veto system. This means, that they cannot affect the procedure rules' content in the same way they can affect the content of the law, putting them in a compliant position. Regulation of the veto system is therefore subjected to National Assembly's autonomous decisions, with no jurisdiction of the National Council to either propose or delay regulating the procedure concerning the veto.

The Rules of procedure of the National Assembly regulate the entire reconsideration of the law procedure and every change in this process demands the Rules' amendment, for which a relative two third majority is needed within the parliament.⁶⁹ The National Assembly, more specifically their Commission for the Rules of Procedure, works on several proposals for changes within the reconsideration process. Such changes in procedural rules from legal profession's point of view, do not represent the best of way of amending these rules, but are at the same time the most probable scenario, since nor amending the Constitution, nor proposing corrections inside the legal regulations are not primarily on the schedules of National Assembly's sessions or the coalition's political programs. In its previous mandates, the National Council

68 Grad, 2013, 166–167.

69 Constitution of the Republic of Slovenia, 94. ar.

ga ni treba sprejeti v obliki zakona. Ustavno sodišče torej ni odločalo o vprašanju, ali navedena določba Državnemu zboru preprečuje, da bi proračun sprejel v obliki zakona. Presodilo je le, ali bi Državni zbor državni proračun v skladu s 87. členom Ustave moral sprejeti v obliki zakona. Ker proračun ne določa pravic in obveznosti državljanov in drugih pravnih oseb, je Ustavno sodišče podalo negativen odgovor in to kljub temu, da se v nemški ustavni ureditvi proračun sprejema prav v obliki zakona. Dva ustavna sodnika sta k tej odločbi podala ločeni, odklonilni mnenji, ker je Državni svet izločen iz obravnave državnega proračuna, glede na to, da se njegova sestava in interesi, ki jih predstavlja, odražajo tudi v proračunskih opredelitvah.⁷¹

Ne glede na navedeno prakso Državnega zbora in Vlade ter zgoraj navedeno odločbo Ustavnega sodišča, pa Državni svet lahko dejansko odloži sprejem državnega proračuna in sicer tako, da vloži veto na zakon o izvrševanju državnega proračuna. Več o tem v nadaljevanju.

13.3.5. *Veto v praksi*

Državni svet v primerjavi z ostalimi drugimi domovi po svetu pogosto uporablja veto. V svojem prvem mandatnem obdobju je Državni svet pogosto sprejemal suspenzivni veto (v 34-ih primerih) in bil pri tem tudi precej uspešen (v osmih primerih zakon pri ponovnem odločanju ni bil sprejet). Vložene zahteve za ponovno odločanje so se nanašale na zelo različna vprašanja v okviru zakonov o lastninskem preoblikovanju, referendumu in ljudski iniciativi, lokalni samoupravi, prisilni poravnavi, visokem šolstvu, prenosu pristojnosti z občin na državo itd.

V petindvajsetih letih je bilo v Državnem svetu podanih 236 predlogov za vložitev veta, pri čemer je Državni

filed many proposals for changes in reconsideration of the law procedure within the National Council Act, but it never received enough support in the National Assembly.

13.3.4 *Vetoing the State budget*

Specificity inside the regulation of institute of act reconsideration is the role of the National Council in deciding on regulation of the State budget. The Council can issue an opinion on the State budget, but cannot veto it. They used to have this jurisdiction, because the State budget was subjected to law regulation which the Council could veto, however, since it has become a fiscal act which is not regulated in legislative way and its vetoing is therefore outside the Council's jurisdictions, they have lost such capability. Changes in the State budget reconsideration procedure legislation caused the National Council to file a review of constitutionality of National Assembly's Rules of Procedure Act, concerning the procedure of deciding about the State budget. The Constitutional Court⁷⁰ thought that Article 148, Paragraph 1 of the Constitution allows the National Assembly to adopt a decision about the state's income and expenses in form of a state budget, and for this reason a special law is not needed. The ruling of the Court therefore was not about whether Article 148 of Constitution forbids the National Assembly to adopt the State budget in form of a law. They only ruled whether the parliament, according to Article 87 of the Constitution, must adopt the State budget in form of a law. Because the State budget is not an act that defines citizens' and legal entities' rights and obligations, the Constitutional Court's response was negative, even though a comparable German legislation adopts the state budget in form of a law. Two of the Constitutional

⁷¹ Povzeto po odločbi ustavnega sodišča U-I-40/96, 3. april 1997, obj. v Uradnem listu RS, št. 24/97.

⁷⁰ Rul. no. U-I-40/96, from 3. April 1997.



svet vložil veto na 139 zakonov, v 99-ih primerih pa predlog veta v Državnem svetu ni bil izglasovan, ker ni bila dosežena poslovniško zahtevana večina.⁷² To pomeni, da se člani Državnega sveta ne odločijo vedno za podporo predlogu za suspenzivni veto, saj je več kot 40 odstotkov predlogov vetov zavrnjenih že v Državnem svetu. V petindvajsetletni praksi zakon na podlagi vloženega veta pri ponovnem odločanju ni bil potrjen v 21-ih primerih, kar predstavlja 15 odstotkov vseh zakonov, na katere je Državni svet vložil veto. V tekočem mandatnem obdobju sta bila zaradi veta v postopku ponovnega odločanja zavrnjena le dva zakona in sicer novela Zakona o lastninskem preoblikovanju Loterije Slovenije in novela Zakona o lokalni samoupravi.

Novela zakona o lokalni samoupravi je urejala institut odpoklica župana in je bila del paketa predlogov zakonov, ki so urejali ostrejšje pogoje za pridobitev ali prenehanje določene javne funkcije. V zakonodajnem postopku so vse zakonodajne predloge za ostale funkcionarje zavrnili, tako da je bil na koncu sprejet le ta zakon. Glede na to, da v Državnem svetu lokalni interesi predstavljajo večino, je institut odpoklica župana predstavljal pomembno temo. Člani Državnega sveta so v razpravah izpostavili, da bi takšen institut lahko ogrozil stabilnost sistema lokalne samouprave. Obstajala je namreč bojazen, da se bo institut zaradi osebnih interesov posameznikov ali interesnih skupin znotraj občine zlorabljal za politične namene, kar bi lahko povzročilo destabilizacijo lokalne samouprave. Župani bi lahko bili na podlagi novele zakona zaradi nevspešnih odločitev, ki so sicer nujne in v interesu občine,

72 Podatki izhajajo iz letnih poročil in poročil o delu Državnega sveta, ki so dostopni na URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. Glej tudi Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

Court's judges gave their dissenting opinions, pointing out that the National Council is by this regulation excluded from deciding about the State budget, despite the fact that their structure and interests they represent, reflect in budget's composition.⁷¹

But even such legal practice of the National Assembly and the Government, as well as the mentioned ruling of the Constitutional Court cannot completely exclude the National Council from affecting the Budget. They can actually delay its adoption by vetoing the Implementation of the Budget Act. More on that follows.

13.3.5. *Veto in practice*

Compared to other second chambers around the world, the National Council frequently executes its veto jurisdiction. In its first mandate the veto was used in 34 cases and was successful (the law was not adopted in the reconsideration procedure) in eight. Filed proposals for reconsideration varied around different questions concerning the ownership transformation acts, referendums and public initiative, local self-government, composition, higher education, transfer of jurisdictions from municipalities to the state, etc.

In the last twenty five years, 236 propositions for filing the veto have been issued within the National Council, from which the veto had actually been filed in 139 cases and not in 99 cases, because the quorum had not been

71 Constitutional Court, ruling U-I-40/96, 3. april 1997, publ. the Official Gazette, no. 24/97.

pod pritiski in hitro podvrženi pobudam za odpoklic. Državni svet je tako na 26. izredni seji 20. 12. 2016 sprejel zahtevo, da Državni zbor ponovno odloča o navedenem zakonu, Državni zbor pa ob ponovnem glasovanju zakona ni sprejel.

V večini primerov dobi zakon po vetu Državnega sveta ponovno podporo v Državnem zboru. Absolutne večine pri ponovnem glasovanju o zakonu, na katerega je Državni svet vložil veto, Državnemu zboru praviloma ni težko doseči, saj vladajoča koalicija razpolaga z absolutno večino (razen v primeru manjšinskih vlad). Seveda pa to pogosto terja zelo visoko udeležbo poslancev, ki podpirajo delo Vlade, na seji Državnega zbora. Kadar je za sprejem zakona predpisana strožja večina, se s takšno večino odloča tudi pri ponovnem odločanju o zakonu na podlagi veta. V takšnem primeru je torej treba doseči kvalificirano večino in istočasno tudi navadno absolutno večino.⁷³

Ne glede na to, da Državni zbor večino zakonov po vetu Državnega sveta ponovno izglasuje, pa pogosto na različne načine upošteva opozorila Državnega sveta, ki jih ta navede v vetu. Enega izmed primerov, v katerem Državni zbor upošteva opozorila Državnega sveta, predstavlja priprava določenih zakonskih sprememb takoj po sprejemu zakona, za kar sicer Državni zbor oziroma Vlada porabi dodaten čas, delo in energijo. Včasih ni treba sprožiti postopka za spremembo zakona, saj se težavo, ki je bila izpostavljena v vetu, uredi na drugačen način. Na to nakazuje praksa v primeru Energetskega zakona leta 2014, v zvezi s katerim je Interesna skupina lokalnih interesov predlagala sprejem odločilnega veta zaradi nekaterih členov, s katerimi se je urejalo energetske izkaznice. Predlagana je bila namreč razširitev obveznosti izdelave

73 O tem Ribičič, Ciril, 2000: Podoba parlamentarnega desetletja, o.c., str. 63, ki navaja: »Veto torej bolj prihaja do izraza v primeru močnih opozicij in šibkih vladnih koalicij, saj lahko že neudeležba oziroma podpora vetu nekaterih vladnih poslancev pomeni uspeh veta.«

reached.⁷² This means that the Council members are not always supportive of the suspensory veto proposals, for more than 40 percent of them are initially refused in the National Council alone. In the twenty five year long practice the laws, because of the filed vetoes in the reconsideration process, were not adopted in 21 cases, which represents 15 percent of all of the vetoed laws. In current mandate only two acts were not adopted because of the veto: the amendment of the Ownership Transformation of the Lottery of Slovenia Act and the amendment of the Local Self-Government Act.

The amendment of the Local Self-Government Act regulated an institute of mayor recalling and was part of a package of laws, regulating stricter conditions for gaining or terminating certain public offices. In the legislative procedure, all of the legislative proposals for other officials in the package were rejected and finally only this law was adopted. Considering the fact that the majority of the National Council consists of local interests groups, the institute of mayor recalling posed a rather important issue. Members of the National Council stressed in the debate that such an institute could jeopardize the stability of the local self-government system. Personal interests of some individuals or interest groups within municipalities could lead to abusing of the institute for political purposes and that could result in destabilization of the local self-government. If the amendment to the law was to be adopted, mayors could be, because of their unpopular but necessary decisions that are in municipality's best interest,

72 The data is from the annual reports and reports on activities of the National Council, available at URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. See also: Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

energetske izkaznice preko minimalnih zahtev Direktive Evropske unije⁷⁴, kar bi podražilo izdelavo energetske izkaznice. Čeprav je zakon vseboval več kot 550 členov, je bilo spornih le nekaj členov, ki so urejali energetske izkaznice, zato je Vlada z uredbo določila zgornjo mejo cen energetskih izkaznic za stanovanjske stavbe in na tak način rešila težavo, ki so jo izpostavili člani Državnega sveta v vetu.

V praksi se je že zgodilo, da se člani Državnega sveta niso odločili za vložitev veta, ker je resorni minister na seji Državnega sveta navedel škodljive posledice nepravočasne uveljavitve zakona, pri tem pa obljubil takojšnjo pripravo novele zakona, s katero se bo odpravilo razloge, zaradi katerih je bila vložena pobuda za sprejem veta na zakon. Tako se je na primer zgodilo pri sprejemanju novele Zakona o gozdovih⁷⁵ leta 2013, ko je Vlada kmalu po sprejemu novele vložila novo novelo istega zakona, s katero je ustrezno popravila ureditev prevoznic v omenjenem zakonu.

Utemeljenost oziroma učinkovitost odločilnega veta se lahko presoja na dva načina, bodisi s tem, kolikokrat Državni zbor ni preglasoval veta, bodisi glede na število pozitivno rešenih ustavnih sporov, ki jih je zaradi neuspelega veta sprožil Državni svet. Prva metoda kaže na nizko uspešnost uporabe pristojnosti veta Državnega sveta, saj je Državni svet zgolj v 15 odstotkih vloženi vetov dosegel, da Državni zbor zakona ob ponovnem odločanju v Državnem zboru ni sprejel. Tako nizek rezultat je posledica dejstva, da veto Državnega sveta ne nalaga Državnemu zboru da ponovno prouči zakon v delu, na katerega je opozoril Državni svet v vetu. Državni zbor veto Državnega sveta pogosto preglasi brez razprave, pri čemer se osredotoči predvsem na ustrezno večino, torej absolutno večino za preglasovanje odločilnega veta.

74 Šlo je za direktivo 2010/31/EU.

75 ZG-D, Uradni list Republike Slovenije, št. 63/13.

put under an immense pressure and liable to recalling initiatives. The National Council accepted a proposition for reconsideration of this law at its 26th session on December 20th 2016. Even after reconsideration and another voting, the law was not adopted by the National Assembly.

In most cases veto is not respected and the vetoed law gets its previous support inside the National Assembly in the reconsideration procedure. The absolute majority of the parliament can easily be reached, because the coalition usually acquires the needed numbers (except in cases of minority governments). Of course in order to achieve that, sessions of the National Assembly must be highly attended by the deputies that support the Government. If the adoption of the law demands higher majority, this kind of majority is also needed in the vetoed law's reconsideration procedure. In this case, a qualified majority and at the same time a bare absolute majority must be reached.⁷³

Despite the fact that the National Assembly still adopts most of the laws even if the veto is filed, they nonetheless respect the Council's warnings and opinions. For instance, as soon as the law is adopted, the parliament initiates preparation of legislative changes and that demands certain amount of National Assembly's or the Government's time, work and energy. Sometimes the procedure for amending the law is not even needed, because the issue pointed out within the veto can be addressed differently. The latter can be presented on a case of Energy Act in 2014. Interest group of local interests proposed an adoption of suspensory veto on articles that regulated energy performance certificate. The act contained extension of mandatory issuing of such certificates beyond the minimal requirements

73 About: Ribičič, C.: Podoba parlamentarnega desetletja. Samozaložba, Ljubljana, 2000, p. 63, that states: »The veto is more recognizable in cases of powerful oppositions and weak government coalitions, for even the non-attendance at sessions or only a few deputies' support for the veto can mean its success.«

Veto Državnega sveta je le redko uspešen iz različnih razlogov. V posameznih primerih se dogaja celo, da poslanci, ki so glasovali proti sprejemu zakona, pri ponovnem glasovanju na podlagi veta Državnega sveta, glasujejo za njegov sprejem. Takšna praksa je posledica iskanja zadostne podpore vladnim predlogom v postopku ponovnega odločanja in odraz ostankov prestižnega boja med domovoma, ki je bil značilen za prva leta po sprejemu Ustave, ko je bilo po besedah prvega predsednika Državnega sveta ozračje, v katerem je deloval Državni svet, neprijazno, odnos Državnega zbora do njega pa podcenjevalen.⁷⁶ Vodstvo Državnega zbora na prve obravnave veta Državnega sveta predstavnikov le-tega sploh ni povabilo, da bi obrazložili razloge za veto, pozneje pa so se morali poslanci, ker niso imeli možnosti razpravljati o vetu,⁷⁷ zateči k obrazložitvi glasu, da so lahko pojasnili svoja stališča glede vloženega veta.

Državni svet je zlasti v uvodnih mandatih po ustanovitvi uveljavljal veto na zakone, ki so se nanašali na celotno področje državnega odločanja, od Zakona o Vladi, o upravi, o volitvah, o Ustavnem sodišču, o referendumu, o sodniških plačah, o državljanstvu itd.⁷⁸ Njegovo poseganje v zakone, ki urejajo položaj in oblikovanje Vlade in Državnega zbora (delovanje Državnega zbora, Vlade in razmerij med njima ipd), je pomenilo, da se je spustil v odločanje tudi zunaj okvira interesov, ki jih je dolžan zastopati. Seveda velja tudi obratno: tudi Državni zbor bi moral, ko gre za pristojnosti Državnega sveta kot drugega parlamentarnega doma, paziti, da ne posega v njegovo avtonomijo ali ovira njegovo delovanje v nasprotju z ustavno ureditvijo dvodomnosti. Kot že navedeno, je

76 Tako Kristan, Ivan, o.c., str. 453.

77 Dr. Ivan Kristan (nav. delo, str. 460) opozarja, da je bilo ponovno odločanje na podlagi veta v poslovniku Državnega zbora reducirano na ponovno glasovanje brez razprave.

78 Ribičič, Ciril, 2000: Podoba parlamentarnega desetletja, o.c., str. 67.

posed by a Directive of the European Union⁷⁴, which would lead to more expensive production of the regarded certificates. Although the act had more than 550 articles, only a few of them were controversial. This was the reason for the Government to adopt a regulation that set a maximum price of the energy performance certificates for residential buildings and posed a final solution to an issue, brought to attention by the National Council's veto.

There were some cases in practice, when the Councilors decided not to file a veto, because the departmental minister pointed out harmful consequences of a delayed adoption of the vetoed law. At the same time, he promised a prompt amendment to the law, which would revoke all the reasons for vetoing the law in the first place. Such situation happened in adopting an amendment to the Forest Act⁷⁵ in 2013, when the Government, as soon as the first amendment was adopted, filed a new amendment to the same act in which the regulation of carriers (transport document that accompanies timber at its transportation from forests to final buyer, also transition allowance) was properly corrected.

Substantiation and efficiency of the suspensory veto can be tested in two ways; either with the number of vetoes not being outvoted by the National Assembly, or with the number of positively resolved constitutional disputes that were requested by the National Council because the veto was unsuccessful. The first method shows a low success rate in executing the Council's veto jurisdiction, for merely 15 percent of the filed vetoes prevented the National Assembly to adopt an act in the reconsideration procedure. Such a low rate stems from the fact that the National Assembly is not bound to reconsider the act in a specific section, which was pointed out as problematic by

74 Directive 2010/31/EU.

75 ZG-D, the Official Gazette, no. 63/13.

še Ustavno sodišče povrnilo predsedniku Državnega sveta takšen status, brez katerega ne more uspešno voditi drugega doma.

Drug primer pa predstavljajo poskusi, da se s Poslovnikom Državnega zbora pristojnost Državnega sveta, da vloži veto na zakon, omeji tako, da se prepreči vsebinska razprava o vetu pred ponovnim odločanjem Državnega zbora o zakonu oziroma rešitvah v njem, ki so predstavljale podlago za vložitev veta Državnega sveta. Tako je bila na podlagi določb Poslovnika Državnega zbora omogočena vsebinska razprava o zahtevi Državnega sveta v postopku ponovnega odločanja zgolj v obdobju 2002–2007, pred in po tem pa ne. Tretji primer poseganja v pristojnosti drugega doma so ponavljajoči se predlogi nekaterih političnih strank in poslancev za ukinitve Državnega sveta.⁷⁹

Kot že navedeno, bi bilo bolj optimalno, če bi lahko Državni zbor v postopku ponovnega odločanja na podlagi veta Državnega sveta spremenil sporno določbo zakona. Državni zbor namreč ne glede na posamezne neustrezne rešitve v zakonu na predlog Vlade zakon večinoma potrdi in takoj pripravi novelo zakona, s katero v novem zakonodajnem postopku pomanjkljivost odpravi. Takšen je bil primer veta na Zakon o odpravljanju posledic dela z azbestom v letu 2006.⁸⁰ Državni svet je vložil veto na zakon, ker bi moral zakon širše urediti azbestno problematiko v Sloveniji, tako da bi bila bolezen priznana vsem obolelim, ne glede na čas izpostavljenosti in gostoto vlaken, ki so jim bili izpostavljeni. Državni zbor predlogov Državnega sveta ni upošteval in je zakon ponovno izglasoval. Dobro polovico leta po sprejemu omenjenega zakona je Državni zbor že sprejel novelo Zakona o spremembah in dopolnitvah

the National Council. The parliament often overrides the veto without any discussion, for all the attention is focused on reaching the absolute majority for outvoting it.

There are several reasons for low success rate of the Council's suspensory veto. In some cases even the deputies who primarily voted against adopting an act, after a filed veto and reconsideration procedure vote for enacting the same law. Such unusual practice is a consequence of trying to grant the support to only Government's proposals in the reconsideration procedure and a relic of a prestige fight between the two chambers after the adoption of the Constitution. The fight was, as stated by the National Council's president, a result of an unkind atmosphere in which the Council worked and National Assembly's underestimation of the upper chamber.⁷⁶ At first, the leadership of the National Assembly did not even invite representatives of the National Council to sessions that involved veto considerations. They could therefore not explain the reasons that lead to the veto filing and later on, because the deliberation on the veto filing was made impossible⁷⁷, deputies had to reason their votes in order to explain their standings on the filed veto.

The National Council has, especially in their introductory mandates after the chamber has been established, vetoed laws concerning the whole area of national decision making, such as the Government of the Republic of Slovenia Act, Administration Act, Constitutional Court Act, Referendum Act, Act Concerning Wages of Judges, Citizenship of the Republic of Slovenia Act, etc.⁷⁸ By interfering with laws that regulate the position and formation of the Government and the National Assembly

79 Grad, Franc; Ribičič, Ciril; Štrus, Dušan, 2013: Ponovno odločanje o zakonu na podlagi veta Državnega sveta, ustavnopravno mnenje, Inštitut za ustavno pravo, Ljubljana, str. 22.

80 Zakon o odpravljanju posledic dela z azbestom, Uradni list RS, št. 15/07 – UPB in 51/09.

76 Dr. Ivan Kristan, o.c., page. 453.

77 Dr. Ivan Kristan (o.c., page. 460) points out, that according to the National Assembly's Rules of procedure, the reconsideration of the vetoed law procedure was reduced to voting without possible discussion.

78 Dr. Ciril Ribičič, Podoba parlamentarnega desetletja, Ljubljana, 2000, s. 67.

Zakona o odpravljanju posledic dela z azbestom, v kateri je upošteval nekatere pripombe Državnega sveta. Poleg tega je Državni svet v letu 2008 vložil tudi novo novelo tega zakona in z njo uspel v zakonodajnem postopku Državnega zbora.

Eden izmed takšnih primerov je bil tudi Zakon o jamstveni shemi Republike Slovenije iz leta 2009, ki v prvotni rešitvi med določitvijo gospodarskih subjektov ni vseboval zadrug, tako da slednje ne bi bile upravičene do posojil. Državni svet je zaradi navedenega razloga izglasoval veto. Državni zbor se je zavzel za uveljavitev jamstvene sheme, zato je ponovno izglasoval zakon, zadruga pa je v zakon vključil prek sprejema novele zakona, ki jo je sprejel več kot mesec dni kasneje. V primeru obstoja možnosti popravljanja zakona v postopku ponovnega odločanja o zakonu bi lahko Državni zbor zadruga vnesel v zakon že v fazi ponovnega odločanja.

Zaradi prakse preglasovanja vetov Državnega sveta in kasnejšega popravljanja zakona Državni zbor porabi veliko časa in napora za popravljanje zakona, čeprav bi to lahko storil zelo učinkovito s spremembo sporne določbe v postopku ponovnega odločanja o zakonu. Podobna je tudi situacija, ko Državni svet ne uspe z vetom, vendar nato po daljšem času uspe z zahtevo za presojo ustavnosti zakona v postopku pred Ustavnim sodiščem. Slednje razveljavi protiustavno določbo zakona, zato mora Državni zbor v takšnem primeru sprejeti novelo zakona, da se odpravi pravna praznina. Takšnih primerov je v praksi več. Eden najbolj odmevnih primerov je bil Zakon o davku na nepremičnine⁸¹ iz leta 2013, ki je bil po vetu Državnega sveta ponovno izglasovan v Državnem zboru, vendar nato v celoti razveljavljen pred Ustavnim sodiščem.

81 Zakon o davku na nepremičnine, Uradni list RS, št. 101/13 in 22/14 – odl. US.

(their activities, relations between the two), the Council overstepped the boundaries of the interests it was supposed to represent. The issue was mutual: the constitutional regulation of bicameral system clearly demands that the two chambers are autonomous in their decision making and that is why the National Assembly should not interfere with the work or sovereignty of the National Council. As mentioned, only the Constitutional Court restored the National Council President's status, which is needed to successfully lead the second chamber.

Another case of interfering with jurisdictions of the National Council represents the attempts of National Assembly's Rules of Procedure to limit the National Council's jurisdiction of filing a veto. The latter prevented any content-related discussions about the veto and the possible solutions it contained within the reconsideration procedure in the parliament. This led to a situation in which the veto's content-related discussion inside the reconsideration process was not allowed before and after the 2002-2007 eras. The third case of external influences is repetitive proposals of some political parties and deputies for complete abolition of the National Council.⁷⁹

As already stated, the optimal solution for the vetoed law reconsideration procedure would be the National Assembly's willingness to change the controversial statutory provision, pointed out by the veto. In most cases the parliament, without even trying to resolve these inadequate solutions inside the act itself, on the Government's proposal confirms the law, but is forced to amend and correct it in another legislative procedure that shortly follows. Such instance occurred in 2006, vetoing the Act Concerning Remediating the Consequences of Work with

79 Grad, F.; Ribičič, C.: Ponovno odločanje o zakonu na podlagi veta Državnega sveta, ustavnopravno mnenje, Inštitut za ustavno pravo, Ljubljana, 2013, page 22.



V nadaljevanju so predstavljeni dodatni konkretni primeri, ki kažejo na koristnost uvedbe možnosti spreminjanja zakona v postopku ponovnega odločanja o zakonu, na katerega je Državni svet vezal svoj veto.

Zanimiva je bila usoda veta na Zakon o visokem šolstvu⁸², ki je bil preglasovan na podlagi predhodne obljube, da bo nemudoma prišlo do spremembe zakona glede spornega vprašanja. Ker sprememba zakona ni bila sprejeta, je Državni svet sprožil ustavni spor. Ustavno sodišče je najprej 27. februarja 1994 zadržalo izvrševanje sporne določbe zakona o upokojevanju profesorjev, da bi jo nato razveljavilo,⁸³ in sicer 25. maja 1995, dve leti po njenem sprejemu. Ustavno sodišče je na zahtevo Državnega sveta razveljavilo določbo o upokojevanju univerzitetnih profesorjev pri določeni starosti, ker je šlo za protiustavni poseg v pristojnosti Univerze, natančneje kršitev pravice do avtonomnosti univerz, ki jo zagotavlja 58. člen Ustave.

Državni zbor je leta 2003 sprejel Zakon o divjadi in lovstvu (ZDLov-1),⁸⁴ ki je bil eden izmed tistih zakonov, ki so se z velikimi črkami zapisali v zgodovino parlamentarne demokracije v Sloveniji. Na nekaj več kot 80 členih zakona je bilo v okviru druge obravnave na matičnem odboru Državnega zbora vloženih kar 132 dopolnil in nato v fazi obravnave na plenumu Državnega zbora še 50 dopolnil, med temi tudi kar nekaj v zadnji, tretji obravnavi. Državni svet se ni strinjal s sprejetim zakonom, zato je izglasoval suspenzivni veto. Ker je bil veto Državnega sveta preglasovan na seji Državnega zbora, se je Državni svet odločil, da vloži zahtevo za presojo ustavnosti in zakonitosti zakona. Pobuda se je nanašala na način določanja in sodelovanje pri oblikovanju lovišč, saj je bilo v nekaterih

82 Zakon o visokem šolstvu, Uradni list RS, št. 67/93.

83 Prim. Kristan, Ivan, 1997: Odložni veto Državnega sveta, Zbornik referatov s srečanja pravnikov javnega prava, Portorož, 3.-5. december 1997, s. 114, 115.

84 Zakon o lovstvu in divjadi (ZDLov-1), Uradni list RS, št. 16/2004, 120/2006-Odl. US, 17/2008.

Asbestos.⁸⁰ The reason for filing the veto was National Council's demand for broader regulation of asbestos issue in Slovenia; the disease should be recognized in every infected person, no matter the duration of exposure and density of fiber they were influenced by. The National Assembly did not consider Council's proposals and the law passed again in the reconsideration procedure. Half a year after adoption of the mentioned law, the parliament adopted the Act Amending the Act Concerning Remedying the Consequences of Work with Asbestos in which some of the Council's proposals were considered. Given that the National Council filed another amendment to the same law in 2008 and it was adopted in the legislative procedure of the parliament.

Another of such cases was the Republic of Slovenia Guarantee Scheme Act in 2009, which failed to include agricultural cooperatives in defining economic entities, leading to their exclusion from eligibility for acquiring loans. The Council vetoed the act. The National Assembly supported the guarantee scheme, which was already part of the law to be enacted, so they re-voted the law's adoption and included agricultural cooperatives in a new amendment, which passed in the following month. If the reconsideration procedure included a possibility for a law to be corrected and not only either fully adopted or rejected, the parliament could include the cooperatives already at that point and another legislative procedure would not be needed.

The National Assembly spends a lot of time and effort on this practice of outvoting vetoes and later correcting the laws, even though they could, if possible in our system, efficiently change the controversial statutory provision within the reconsideration of the act procedure. Similar situation as the one described above, occurs when

80 Act Concerning Remedying the Consequences of Work with Asbestos, the Official Gazette, no. 15/07 – UPB in 51/09.

členih določeno, da pri oblikovanju lovišč sodelujejo lov-ske in druge naravovarstvene organizacije, izključeno pa je bilo sodelovanje lastnikov kmetijskih in ostalih zemljišč, na katerih se nahajajo lovišča, ali njihovih predstavn-ških organizacij. Pobudnik je zatrjeval, da so bile zaradi kršitve lastninske pravice v neskladju z določenimi členi Ustave tudi določbe, v katerih je bilo opredeljeno usta-navljanje lovišč. Lovišča naj bi se ustanavljala ne glede na lastništvo kmetijskih zemljišč in gozdov. Ustavno sodišče Republike Slovenije⁸⁵ je odločilo, da je takrat veljavni 26. člen Zakona o divjadi in lovstvu v neskladju z Ustavo, ker ni omejeval trajanja prednostne pravice dotedanjih upravljavcev lovišč pri pridobitvi koncesije za trajnostno gospodarjenje z divjadjo na postopek prve podelitve koncesije po uveljavitvi zakona. Nadalje je ugotovilo, da sta bila v neskladju z Ustavo tudi šesti odstavek 29. člena, ker ni določal, da pripada del koncesijske dajatve tudi občini, na območju katere se izvaja koncesija in osmi odstavek 29. člena Zakona o divjadi in lovstvu. Ustavno sodišče je zakonodajalcu naložilo, da mora odpraviti ugotovljene neustavnosti v roku enega leta od dneva objave odločbe v Uradnem listu Republike Slovenije.⁸⁶ Če bi lahko Državni zbor popravil neustavne določbe v postopku ponovnega odločanja o zakonu, bi bili z nadaljnjimi postopki razbre-menjeni ne samo Državni svet, ki je vložil presojo ustavnosti, in Ustavno sodišče, ki je izdalo odločbo, ampak tudi Državni zbor, ki je moral ugotovljene neustavnosti zakona odpraviti.

Zakon o vinu⁸⁷ je sprejel Državni zbor 20. 12. 2005. Tri dni kasneje je Državni svet na zakon vložil odločilni veto. Eden izmed pomislekov se je nanašal na število vi-norodnih dežel – namesto treh (Primorska, Podravje in Posavje) je bilo sprejeto določilo, da sta vinorodni deželi

85 Gl. odl. št. U-I-98/04.

86 Odločba Ustavnega sodišča, št. U-I-98/04, Uradni list RS, št. 120/06.

87 Uradni list Republike Slovenije, št. 105/06.

the National Council fails to file a veto, but succeeds in filing the review of constitutionality to the Constitutional Court. The latter annuls the unconstitutional statutory provision and the National Assembly must adopt an amendment to fill the legal gap. There are several cases as such in the legal practice. The most significant case was the Real Property Tax Act⁸¹ in 2013 that was vetoed by the Council, later on re-voted within the Parliament and finally annulled by the Constitutional Court.

The practicality of introducing the possibility to change the law within the reconsideration of the vetoed law procedure in contrast with only adopting or rejecting it will be shown on a series of practical cases.

The veto to the Higher Education Act⁸² was outvoted based on a promise that there will be prompt changes to its controversial issues. Because the promised amendment was not adopted, the National Council started a constitutional dispute. On February 27th 1994 the Constitutional Court withheld the execution of the controversial statutory provision that regulated retiring of professors in preparation for its later annulment (May 25th, 1995, two years after its adoption).⁸³ The Court annulled the provision because it posed as an unconstitutional interference with the University's authority; specifically, it violated the right to autonomy of the Universities, granted by Article 58 of the Constitution.

In 2003 the National Assembly adopted the Wild Game and Hunting Act⁸⁴ which made its history in Slovenian parliamentary democracy. In its second reading

81 Real Property Tax Act, the Official Gazette of RS, no. 101/13 in 22/14 – odl. US.

82 Higher Education Act, the Official Gazette of RS, no. 67/93.

83 Dr. Ivan Kristan, Odložni veto Državnega sveta, Zbornik referatov s srečanja pravnikov javnega prava, Portorož, 3.-5. december 1997, p. 114, 115.

84 Wild Game and Hunting Act (ZDLov-1), Official Gazette of RS, no. 16/2004, 120/2006-Odl. US, 17/2008.

le dve, in sicer Primorska in Vzhodna Slovenija. Pri ponovnem odločanju o zakonu v Državnem zboru ta ni bil sprejet. Vlada je v odgovor na zavrnitev zakona pripravila novo besedilo zakona, v katerem je upoštevala tudi rezultat ankete v Posavju, zato je bilo v besedilu določeno, da se vinogradno območje Republike Slovenije deli na tri vinogradne dežele in 9 vinogradnih okolišev. Predlagatelj je spoznal, da je bila delitev vinogradnega območja glavni razlog, da prvotni zakon po odločilnem vetu Državnega sveta ni bil ponovno izglasovan. Nov zakon o vinu je bil sprejet dne 28. 9. 2006. V kolikor bi obstajala ureditev, ki bi Državnemu zboru omogočala spremembo zakona v postopku ponovnega odločanja, bi bil lahko zakon spremenjen že v postopku ponovnega odločanja januarja leta 2006 in ne devet mesecev pozneje.

Državni svet je konec leta 2006 sprejel zahtevo, da Državni zbor ponovno odloča o Zakonu o verski svobodi⁸⁸. Državni zbor je veto Državnega sveta preglasoval in ponovno izglasoval zakon, zato je Državni svet marca 2007 sprejel zahtevo za oceno ustavnosti in zakonitosti Zakona o verski svobodi. Ustavno sodišče je razveljavilo del Zakona o verski svobodi, ki se je nanašal na registracijo verske skupnosti in na zaposlovanje duhovnikov.⁸⁹ Vlada je šele septembra 2013 v Državni zbor vložila predlog novele zakona, ki naj bi odpravil pravno praznino in smiselno uredil pogoje za registracijo verske skupnosti ter s tem zakon uskladil z odločbo Ustavnega sodišča. Za popraviljanje neustavne določbe je bilo namesto nekaj dni, v katerih bi lahko spremenili zakon v postopku ponovnega odločanja, potrebnih več kot šest let in vrsta postopkov pred Državnim svetom, Državnim zborom in Ustavnim sodiščem.

88 Zakon o verski svobodi, Uradni list RS, št. 14/07.

89 Odločba Ustavnega sodišča št. U-I- 92/07.

within the National Assembly's responsible working body, a little more than 80 of its articles received 132 of supplements. Later, within the consideration procedure at parliament's plenum, it received another 50 supplements, several of them in the third reading. The National Council vetoed the law and it was outvoted by the National Assembly. The Council therefore decided to file a request for review of constitutionality and legality of the law. The request concerned the law's way of regulating the creation of hunting grounds and cooperation in designing them. Some articles of the law stated that in creating the hunting grounds, hunting and other nature-protecting groups can participate, but the owners of the agricultural and other lands that contain such grounds and their representative organizations were excluded. The initiator stated that some provisions regulating the establishment of hunting grounds were unconstitutional, because they violated his ownership rights. Such grounds were being established without considering the ownership of the agricultural land and forests. The Constitutional Court of the Republic of Slovenia⁸⁵ decided that Article 26 of the Wild Game and Hunting Act was not in accordance with the Constitution. The duration of a priority right of previous operators of the hunting grounds for obtaining a concession for sustainable game management was not limited to the procedure of first concession obtaining after the law adoption and that was unconstitutional. Furthermore, the Court noted that Paragraphs six and eight of Article 29 of the same law were unconstitutional. Unconstitutionality of Paragraph 6 was based on the failure to state that part of concessional duties belongs to the municipality that owns the grounds on which the concession is being exercised. The Court ordered the legislator to abrogate identified unconstitutionality in a period of one year

85 U-I-98/04

Novela Zakona o gozdovih⁹⁰ je v letu 2013 med drugim uvedla ukrepe za preprečevanje trgovanja z nezakonito posekanim lesom. Državni svet in njegovo delovno telo sta v času zakonodajnega postopka med drugim pozivala predlagatelja in Državni zbor naj uvedejo izjemo, tako da za traktorski prevoz manjših količin lesa ne bo zahtevana prevoznica. Zakon je Državni zbor sprejel dne 15. julija 2013, ne da bi pri tem upošteval predlog Državnega sveta. Pri obravnavi predloga odločilnega veta je minister za kmetijstvo in okolje Dejan Židan pozval člane komisije, naj ne podprejo zahteve za odločilni veto in s tem omogočijo, da Vlada začne s takojšnjim izvajanjem zakona, s katerim se bo preprečilo nezakonito sečnjo in z njo povezano trgovino. Minister je poudaril, da so pripombe Državnega sveta glede prevoznic smiselne in se je hkrati zavezal, da bo Ministrstvo za kmetijstvo in okolje v roku štirih mesecev pripravilo novelo zakona, v kateri bodo upoštevali pripombe Državnega zbora. Državni svet zato predloga za odločilni veto ni podprl. Če bi obstajala možnost, da bi Državni zbor zakon popravil v postopku ponovnega odločanja o zakonu, ministru ne bi bilo treba prepričevati članov Državnega sveta naj predloga veta ne podprejo, temveč bi bil zakon v okviru ponovnega odločanja na podlagi veta Državnega sveta ustrezno spremenjen.

Napačno bi bilo vpliv Državnega sveta na sprejem zakonov presojati samo na podlagi podatkov o vloženih in zavrženih vetih. Že sam obstoj Državnega sveta in grožnja možnosti ponovnega odločanja na podlagi njegovega veta, pozitivno vplivata na kvaliteto sprejete zakonodaje. Prav tako ne gre podcenjevati vpliva razprav in mnenj, oblikovanih v delovnih telesih Državnega sveta in na njegovih plenarnih sejah, saj pride do sprejema veta predvsem takrat, ko se predhodno izražena mnenja in

90 Zakon o gozdovih, Uradni list Republike Slovenije, št. 63/13.

after the judgment is published in the Official Gazette of Republic of Slovenia.⁸⁶ If the National Assembly were capable of correcting the unconstitutional provisions within the reconsideration procedure, all three bodies would be relieved of further procedures; the Council of filing the review, the Court of deciding and the National Assembly of abrogating the unconstitutionality.

The Wine Act⁸⁷ was adopted on December 20th 2005. Three days later a veto was submitted by the National Council. One of the reasons concerned the number of winegrowing lands - instead of three (Primorska, Podravje and Posavje), only two of them were recognized by the act (Primorska and East Slovenia). In the reconsideration of the act procedure, the law was rejected. The Government prepared a new act, which included results of a survey conducted in Posavje. The act stated that the winegrowing area of the Republic of Slovenia is divided into three winegrowing lands and 9 winegrowing regions. The initiator of the act realized that the division of winegrowing areas was the main reason for the law not being re-voted after the Council's veto. A new Wine Act was adopted on the 28th of September 2006. If there was a possibility for the National Assembly to only change a few provisions of a flawed law in the reconsideration process, it would have been adopted in January of 2006 and not nine months later as it later was.

By the end of 2006 the National Council submitted a demand for the National Assembly to reconsider the Freedom of Religion Act⁸⁸. The veto was outvoted and the law was reapproved so the National Council requested a review of constitutionality and legality of the act. The Constitutional Court annulled a part of the Freedom of Religion Act that regulated registration of religious

86 Constitutional Court ruling, no. U-I-98/04, Official Gazette of RS, no. 120/06

87 Official Gazette of Republic of Slovenia, no. 105/06.

88 Freedom of Religion Act, (ZVS, Official Gazette of RS, no. 14/07).



predlogi Državnega sveta in njegovih delovnih teles ne upoštevajo.

Kot navedeno, se pomembnost instituta veta ne meri le z rezultatom glasovanja v postopku ponovnega odločanja o zakonu v Državnem zboru. Državni svet lahko namreč po vložitvi veta in po njegovem preglasovanju v Državnem zboru, vloži zahtevo za začetek postopka za oceno ustavnosti in zakonitosti predpisov in splošnih aktov. To možnost daje Državnemu svetu Zakon o Ustavnem sodišču.⁹¹ Uspeh Državnega sveta v postopku za oceno ustavnosti in zakonitosti se zelo razlikuje od rezultata učinkovitosti veta. Značilno je, da je veliko zahtev za začetek postopka za oceno ustavnosti in zakonitosti vloženih po tem, ko so bili veti na zakone, ki po mnenju Državnega sveta niso v skladu z Ustavo, v Državnem zboru preglasovani. Tako je Državni svet v obdobju 25-ih let od 53-ih vloženih zahtev na Ustavno sodišče, kar v 21-ih primerih vložil zahtevo za oceno ustavnosti na zakon, na katerega je pred tem vložil veto in ga je Državni zbor preglasoval, kar pomeni, da je Državni zbor zakon sprejel z absolutno večino v postopku ponovnega odločanja o zakonu. Ustavno sodišče je v primeru 12-ih zahtev spoznalo, da so določbe v tistem delu zakona, v katerem je preverjanje zahteval Državni svet, v nasprotju z Ustavo.⁹² To pomeni, da je v več kot 57 odstotkov vseh zakonov, v zvezi s katerimi je Državni svet vložil zahtevo za presojo ustavnosti na Ustavno sodišče po neuspelem vetu Državnega sveta, delno ali v celoti v nasprotju z Ustavo. Rezultat kaže na visoko stopnjo utemeljenosti vloženih

community and employing priests.⁸⁹ The Government did not file a proposal for amending the act until September 2013. With this amendment the legal gap needed to be filled and the conditions for registration of religious communities needed to be put in accordance with the Constitutional Court's ruling. Instead of simply correcting a few controversial provisions within the reconsideration process, it took more than six years to correct the unconstitutionality, including several procedures in the National Council, National Assembly and the Constitutional Court.

An amendment to the Forest Act⁹⁰ in 2013 introduced measures for prevention of trade in illegally logged timber. The National Council and its responsible working body urged the initiator and the National Assembly to make an exception and not demand a transition allowance (carrier) for the tractor transportation of smaller quantities of timber. The law was adopted on July 15th 2013 without concerting the Council's proposal. In deliberating on the suspensory veto proposal the Minister of Agriculture and Forestry Dejan Židan urged commission members not to support the veto proposal and by doing so make possible for the Government to immediately start enforcing the law, which would prevent the illegal logging and trade. The Minister emphasized that Council's comments on transition allowances were in place and at the same time promised that the Ministry would prepare an amendment to the law within a period of four months, which would respect the opinions of the Council. Consequently the National Council did not vote for the veto proposal. Once again, if there existed a possibility for the National Assembly to amend the law within the reconsideration

91 To določa 23. člen Zakona o Ustavnem sodišču.

92 Podatki izhajajo iz letnih poročil in poročil o delu Državnega sveta, ki so dostopni na URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. Glej tudi Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

89 Ruling of the Constitutional Court, no. U-I- 92/07.

90 ZG-D, Official Gazette of RS, no. 63/13.

odložilnih vetov in sproženih ustavnih sporov. Navedena uspešnost Državnega sveta v postopkih pred Ustavnim sodiščem pa pomeni, da so bili nekateri odložilni veti že samo zaradi protiustavnosti vloženi utemeljeno, čeprav jih je Državni zbor zavrnil.

V praksi se včasih pokaže problem v zvezi z možnostjo popraviljanja predloga zakona, saj slednjega večkrat ni mogoče več popraviti, ker sporni člen v drugi ali tretji obravnavi ni več odprt. V skladu z obstoječo ureditvijo v Poslovniku Državnega zbora spornega člena predloga zakona ni mogoče več odpirati in popravljati, če v drugi obravnavi na delovnem telesu k njemu ni bilo sprejete ga amandmaja. V takšnem primeru obstoječa ureditev v Poslovniku Državnega zbora ni primerna, ker je treba zakon sprejeti ob védenju, da vsebuje slabo rešitev, ki jo bo potrebno popraviti po sprejemu zakona. Zakon se lahko popravi le tako, da predlagatelj pripravi novelo zakona, kar pomeni večmesečno izgubo preden je zakonska ureditev ustrezno popravljena. Poslovník Državnega zbora bi že sedaj moral vsebovati varovalke, ki bi izjemoma omogočale popraviljanje zakona v delih, ki so že zaprti, ravno zaradi razlogov, ki so navedeni zgoraj. Postopek ponovnega odločanja se kaže kot odlična rešitev za popraviljanje zakonskih določb, ki jih ni bilo mogoče popraviti med zakonodajnim postopkom v Državnem zboru.

13.3.6. *Pomen izraza ponovno odločanje*

Osrednji problem slovenske poslovniške ureditve veta Državnega sveta je njegova okorelost. Državni svet ima možnost, da zakon v celoti sprejme ali pa nanj vloži veto in ga tako zavrne v celoti. Vendar Državni svet običajno ne nasprotuje celotnemu zakonu, temveč le posameznim rešitvam v njem. Državni zbor lahko pri ponovnem odločanju zakon sprejme ali ne, ne more pa zakona spremeniti v skladu s predlogi Državnega sveta. Zato so poslanci

process, without rejecting it fully, the Minister would not be compelled to persuade the Councilors.

The incorrect way of measuring the National Council's influence on the laws would be considering only the filed/rejected veto ratio. The mere existence of the Council and the constant threat of suspensory veto show their positive impact on the quality of adopted legislation. The influence of discussions and opinions formed in the Council's responsible working bodies and their plenary sessions should also not be underestimated, for the veto is most commonly a consequence of instances, when opinions and proposals of the Council and its working bodies are not being considered.

As previously stated, the importance of the veto institute cannot only be measured by the reconsideration of an act procedure results. The National Council can, after filing the veto and its outvoting by the parliament, file a request for review of constitutionality and legality of regulations and general acts. This option is granted by the Constitutional Court Act.⁹¹ Success rate within the review procedure differs from the one in the veto filing process. Many requests for reviews were filed after vetoes to the laws, unconstitutional by the Council's opinion, were outvoted by the National Assembly. In the 25 years era, the National Council submitted altogether 53 requests to the Constitutional Court, 21 of them were requests for review of constitutionality and legality, filed because the law has been vetoed and later re-voted (adopted by reaching an absolute majority in the reconsideration process) by the parliament. The Constitutional Court ruled that 12 requests for reviewing an act were justified and

91 Article 23 of Constitutional Court Act.

pogosto pred dvema slabima izbira: sprejeti zakon, ki vsebuje očitno slabost, ali pa zaradi posamezne neustrezne rešitve zavrniti celoten zakon.

Temeljno vprašanje pri ureditvi ponovnega odločanja o zakonu je, ali je pravilno, da se pri ponovnem odločanju samo ponovno glasuje o zakonu, ne pa tudi ponovno obravnava zakon. Smisel suspenzivnega veta je namreč v tem, da vsebuje kritični pogled Državnega sveta na sprejeti zakon, ki naj bi ga imeli poslanci Državnega zbora priložnost obravnavati in se nato odločiti, ali jih je prepričal ali ne. To jim trenutna poslovniška ureditev onemogoča. Razlog za tako ureditev naj bi bil v tem, da so poslanci že v rednem postopku dodobra obravnavali zakon in si izoblikovali stališče do njega. To je sicer res, vendar takrat pred seboj še niso imeli stališč Državnega sveta, glede katerih v ponovnem postopku sploh ne morejo razpravljati. Takšna ureditev vzbuja dvome ne samo o smislu suspenzivnega veta, temveč delno zanika celo smiselno obstoja Državnega sveta. Kajti rezultat tako urejenega ponovnega odločanja o zakonu na podlagi suspenzivnega veta vodi samo do podaljševanja zakonodajnega postopka, namesto, da bi vodil do izboljšanja vsebine zakona, kar je sicer temeljni smisel odločilnega veta.⁹³

Ureditev v zvezi s ponovno obravnavo zakona v Poslovniku Državnega zbora je bila 'napadena' tudi pred Ustavnim sodiščem.⁹⁴ Ustavno sodišče je pri presoji ustavnosti napadenih poslovnih določb ugotovilo, da so skladne z Ustavo, razen določb, ki so se nanašale na nujni (v času ustavne presoje imenovan hitri postopek) in skrajšani postopek. Glede drugih 'napadenih' določb pa je menilo, da niso bile v neskladju z Ustavo, predvsem zato, ker Ustava ne določa načina, po katerem naj se

the provisions pointed out by the Council were unconstitutional.⁹² This means that more than 57 percent of the laws, requested by the Council to be reviewed by the Court, are partially or fully in dissonance with the Constitution. The results show high ratio of well-founded filed vetoes and started constitutional disputes. The National Council's success rate in front of the Constitutional Court means that some of the suspensory vetoes were reasonably filed just for law's unconstitutionality, despite being later rejected by the National Assembly.

In practice, a problem sometimes occurs in connection with the possibility of correcting a law proposal. The latter can in many cases not be corrected once the first reading is completed, because the controversial article may not pose an issue in the second or third reading and is not a matter of discussion anymore. According to the National Assembly's Rules of Procedure, the controversial article of the proposal cannot be corrected and opened for discussion if in the second reading within the responsible working body an amendment to that law was not adopted. In this case, the current regulations of the Rules of Procedure are not adequate; the law is therefore adopted knowing that it contains a bad solution that will need solving after the act's adoption. The law can only be corrected if the initiator prepares an amendment to it, resulting in months of lost time. For these reasons the National Assembly's Rules of Procedure should contain safeguards, which allowed the law to be corrected in sections that are already closed for discussion. The reconsideration

93 Grad, Franc, 2013, o.c., str. 167; Kristan, Ivan, 1997, o.c., str. 108–115.

94 Odločba US, št. U-I-84/96, 1996.

92 The data is from the annual reports and reports on activities of the National Council, available at URL <http://www.ds-rs.si/?q=publikacije/poročila-o-delu-drzavnega-sveta>. See also: Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu from 17. 12. 1997 to 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.





izvede ponovni postopek, kar dopušča različne možnosti poslovniške ureditve.⁹⁵

Ustavno sodišče je torej odločilo, da je poslovniška ureditev postopka ponovnega odločanja v avtonomiji Državnega zbora. Po mnenju Ustavnega sodišča Ustava od Državnega zbora ne zahteva, da ponovno odloča o spornem delu zakona, temveč da ponovno odloča o zakonu (kot celoti). Iz obrazložitve odločbe izhaja, da se Ustavnemu sodišču ni bilo treba spuščati v vprašanje, ali bi bilo skladno z Ustavo, če bi poslovnik drugače uredil ponovno odločanje o zakonu po suspenzivnem vetu.⁹⁶ Ustavno sodišče je na ta način jasno navedlo, da bi bila drugačna ureditev ponovnega odločanja možna, vendar mu tega ni bilo treba obravnavati. Iz tega izhaja stališče Ustavnega sodišča, da je mogoče postopek ponovnega odločanja urediti na drugačen način, ki bi bil prav tako skladen z Ustavo, saj slednja ne določa natančnega načina njegove ureditve, ampak to prepušča poslovniški ureditvi.

Izraza »glasovanje«, ki ga je pri ponovnem odločanju določil poslovnik, in »odločanje« ne moreta biti sinonima. Postopek sprejemanja odločitev je sestavljen iz več faz, ki obsegajo prepoznavanje problema, določanje ciljev, iskanja rešitev in oblikovanja alternativ, vrednotenja alternativ in končno izbire ene izmed njih. Glasovanje je na drugi strani le tehnično opravilo končne faze odločanja, torej ožji, končni del procesa odločanja.

O tem, kaj pomeni ustavni izraz »ponovno odločanje«, in ali je poslovniška ureditev, ki ne dovoljuje razprave pri ponovnem odločanju o zakonu, ustavna, sta svoja mnenja

procedure seems like an excellent solution for correcting the statute provisions that could not be mended during the legislative procedure within the National Assembly.

13.3.6. *The meaning of word "reconsideration"*

The main problem of the Slovenian procedural regulation of the Council's veto is its rigidity. The National Council either has a possibility to fully accept the law or fully reject it by filing a veto. But it is not always a law as a whole that poses a problem – it is the law's individual provisions and solutions they contain. The National Assembly can either adopt the law within the reconsideration procedure or reject it; they cannot change it in a way that the Council proposed. This is why the deputies stand between two bad possibilities: either to adopt a bad law or fully reject it, because it contains a singular bad solution.

The key question in regulating the reconsideration of an act procedure is whether the fact that the law can only be put through another voting process, without it being open to discussion and correcting, is the right solution. The point of the suspensory veto is that it contains the National Council's critical view on the adopted law that should later be considered by the deputies, who should decide whether it was convincing enough. The current Rules of Procedure system disables them in doing that. The reason for such regulation is the fact that the deputies were already able to consider the law within the regular legislative procedure and should already have their opinions and views on it. This is in itself correct, but another fact is that before, within the regular procedure, they did not know the Council's view on the law. Such system is doubtful. Not only because the rationality of the veto institute is in question, but also because it questions the meaning of the Council's very existence. Consequences of such regulating of the reconsideration of the vetoed law procedure lead

95 Grad, Franc, 2013, o.c., 167-168.

96 Ustavnemu sodišču se ni bilo treba spuščati v vprašanje, ali bi bilo skladno z Ustavo, če bi poslovnik določil, da lahko Državni zbor v primeru zavrnitve zakona pri ponovnem glasovanju odloči, da se zakon npr. vrne v drugo obravnavo oziroma da se lahko spreminja z amandmaji. Več o tem gl. Odločba US, št. U-I-84/96.

predstavila tako Ustavno sodišče kot tudi teorija.⁹⁷ Kot že navedeno, je v letu 1999 Ustavno sodišče odločilo, da ni ovir, da poslovnik Državnega zbora ne bi omogočil Državnemu zboru, da v primeru veta tudi spremeni določbo, zaradi katere je veto vložen. Teorija pa je že pred to odločitvijo Ustavnega sodišča opozarjala, da bi bilo spreminjanje zakonov v fazi ponovnega odločanja na predlog Državnega sveta razumna in racionalna rešitev.⁹⁸ Poslovnik Državnega zbora je po mnenju teorije⁹⁹ celo pomanjkljiv, ker ne dopušča delne (amandmajske) spremembe zakona na podlagi vloženega veta, ravno zato je tudi veljavna ureditev močno omejujoča in škodljiva z vidika prizadevanj za večjo kakovost zakona. Marsikateri predlog Državnega sveta bi bil namreč upoštevan že v teku zakonodajnega postopka, tako da bi do veta prišlo v manj primerih.¹⁰⁰

Verjetno bo tudi v Državnem zboru postopno dozorelo spoznanje o koristnosti spreminjanja zakona na podlagi veta, saj bi Državni zbor na ta način lahko preprečil marsikatero težavo (nekonistentnost zakona, novi predlogi za spremembo zakona, ustavni spori itd.). Igličar¹⁰¹ meni, da veljaven način ureditve ponovnega odločanja o zakonu onemogoča morebitno iskanje kompromisnih rešitev ali izboljšav zakonskega predloga, saj Državni svet ne more predlagati amandmajev niti ob ponovnem odločanju niti v prejšnjih fazah zakonodajnega postopka, s tem pa je vloga Državnega sveta močno omejena.

97 Odločanje je proces, ki je sestavljen iz več dejanj, med katerimi je glasovanje samo zadnje dejanje. Gl. Kristan, I.: Dvodomnost in zastopnost regionalnih interesov, v: Regionalizem v Sloveniji, ČZ Uradni list RS, Ljubljana, 1998, str. 180; Teorija je dvomila v pravilnost ureditve, da Državni zbor v postopku ponovnega odločanja o zakonu samo glasuje o zakonu in o njem ne razpravlja. Tako Grad, F.: Parlament in vlada, n.d., str. 265; Kristan, I.: Odložni veto Državnega sveta, n.d., str. 112.

98 Tako Kristan, Ivan, 1997: Odložni veto Državnega sveta, o.c., str. 113, ki navaja, da takšna ureditev ni bila sprejeta predvsem zaradi stališča nekaterih poslancev in pravnikov, ki niso hoteli priznati dvodomnosti.

99 Grad, Franc, 2000, o.c., str. 265.

100 Ribičič, Ciril, 2001, o.c., str. 133.

101 Igličar, Albin, 2007, o.c., str. 492–494.

only to lengthening of the legislative process, instead of leading to improvement of the law's content, which represents the fundamental meaning of the suspensory veto.⁹³

Regulation of the reconsideration procedure as stated in the National Assembly's Rules of Procedure was also a matter of review by the Constitutional Court.⁹⁴ The Court decided that the Rules were in accordance with the Constitution, except for the provisions regarding the summary and emergency proceeding (in the time of review also known as quick proceeding). Other reviewed provisions were not in conflict with the Constitution, basically because the latter does not foresee a correct way of executing the reconsideration procedure, which allows different options in procedural regulations.⁹⁵

The Constitutional Court therefore decided that the procedural regulations of the reconsideration process are in National Assembly's autonomy. In the Court's opinion the Constitution does not require the National Assembly to reconsider only the controversial part of the law, but to reconsider it as a whole. From the substantiation of the decision follows, that the Court did not deliberate over the question whether different regulation of the reconsideration procedure within the Rules of Procedure would be unconstitutional.⁹⁶ This way the Court clearly stated that different regulation of the reconsideration procedure could also be constitutional, because the Constitution itself does not specify its course, leaving it to the Rules of Procedure.

93 Grad, 2013, page 167; Kristan, 1997, page 108–115

94 (Ruling CC, no. U-I-84/96, 1996).

95 Grad, 2013, 167–168

96 The Constitutional Court did not deliberate over the question of constitutionality of the Rules that stated that the National Assembly can, if the law was rejected in the reconsideration procedure, decide for the law to go back to the second consideration or that it can be amended. More on that in: Ruling of the C.C., no. U-I-84/96.

Kot že navedeno, je Ustava pri urejanju zakonodajnega postopka prepustila Državnemu zboru, da avtonomno zapolni ureditev v Poslovniku Državnega zbora. Postopek ponovnega odločanja je Državni zbor v letu 1993 uredil v Poslovniku zelo omejujoče, brez možnosti razprave na seji Državnega zbora in brez možnosti spreminjanja zakona. Po sprejemu novega Poslovnika v letu 2002 je pet let¹⁰² sicer obstajala ureditev, ki je omogočala, da je Državni zbor pri ponovnem odločanju opravil tudi razpravo o vetu Državnega sveta. Po letu 2007 pa znova velja ureditev, kakršna je obstajala že od sprejema prvega Poslovnika Državnega zbora iz leta 1993, in sicer, da Državni zbor le ponovno glasuje o zakonu. Državni zbor torej sploh ne more odpreti razprave v postopku ponovnega odločanja o zakonu, zaradi česar člani Državnega zbora v ta namen izrabljajo institut obrazložitve glasov, kjer predstavijo svoje poglede na veto Državnega sveta.

13.3.7. *Sprememba ureditve postopka ponovnega odločanja*

Ob upoštevanju Ustave, odločb Ustavnega sodišča in mnenja teorije je ne samo mogoče, ampak tudi primer- no spremeniti postopek ponovnega odločanja tako, da ne bo šlo več le za ponovno glasovanje v Državnem zboru, temveč za ponovno vsebinsko odločanje o zakonu. Za to bi bilo treba spremeniti ustavno ureditev veta in jo izločiti iz člena o razglasitvi zakona, postopek v zvezi z vetom in postopek ponovnega odločanja pa ustrezno urediti tudi na zakonski ravni. V okviru obstoječe ustavne ureditve je sprememba Poslovnika glede postopka ponovnega odločanja skladna z Ustavo, vendar ni primerna materija za poslovniško ureditev.

¹⁰² Takšna ureditev je obstajala od leta 2002 do spremembe Poslovnika v letu 2007 (Uradni list RS, št. 64/07).

The terms “voting” and “deciding” in the reconsideration procedure cannot be synonyms. The procedure of decision making consists of several phases: identification of a problem, determination of goals, search for solutions and alternatives, evaluation of alternatives and finally choosing one of them. Voting is only a technical procedure at the end of the deciding procedure, the final part of deciding process.

The legal theory and the Constitutional Court both stated their opinions on the meaning of the expression “reconsideration procedure” and the constitutionality of absence of discussing the law within the reconsideration process.⁹⁷ As already stated, in the year of 1999 the Constitutional Court decided that there were no barriers for the National Assembly’s Rules of Procedure to allow the National Assembly to change the vetoed provision. The legal theory was, even before the previous judgement, pointing out that changing vetoed laws within reconsideration procedure would be a reasonable and rational solution.⁹⁸ The National Assembly’s Rules of Procedure are, by legal theory’s⁹⁹ opinion, deficient, because they do not allow partial (in form of an amendment) changing of a law when the veto is filed, which is limiting and adverse to the law’s quality. Many proposals of the National Council would already be respected during the legislative procedure, so the veto cases would be rare.¹⁰⁰

⁹⁷ Process of deciding consists of several actions, voting just being the last of them. See. Kristan, I.: Dvodomnost in zastopnost regionalnih interesov, v: Regionalizem v Sloveniji, ČZ Official Gazette RS, Ljubljana, 1998, no. 180; The theory was doubting the adequacy of the National Assembly’s mere jurisdiction to only vote and not discuss the law within the reconsideration procedure. Grad, F.: Parlament in vlada, n.d., no. 265; Kristan, I.: Odložni veto Državnega sveta, n.d., no. 112.

⁹⁸ Kristan, I.: Odložni veto Državnega sveta, n.d., no. 113, states that such regulating was not adopted mostly because of opinions of some deputies and lawyers that did not want to recognize the bicameral system.

⁹⁹ Grad, 2000, p. 265.

¹⁰⁰ Ribičič, 2001, p. 133.



V postopku ponovnega odločanja bi lahko uvedli možnost Državnega sveta predlagati amandmaje v vetu pri čemer bi Državni zbor o njih odločal na seji Državnega zbora. Državni zbor bi z odločitvijo o amandmajih in o zakonu v celoti sprejel dokončno odločitev o sprejemu zakona, na katerega ne bi bilo mogoče več vložiti veta.

Postopek ponovnega odločanja ne bi bil izvedbeno zapleten in zamuden, ampak bi, nasprotno, potekal hitro in, kar je bistveno, omogočal bi rešitve, ki bi lahko izboljšale kvaliteto zakona. Predlagana sprememba bi pospešila zakonodajni postopek, ker se Državnemu zboru in njegovim matičnim delovnim telesom ne bi bilo trebna ukvarjati s spreminjanjem in oblikovanjem vsebine amandmaja, ampak bi odločali le o sprejemu ali zavrnitvi predlaganega amandmaja. Možnosti vlaganja amandmajev ne bi imele niti poslanci niti poslanske skupine ali ostala delovna telesa Državnega zbora. Dejansko postopek ponovnega odločanja o zakonu ne bi bil bistveno daljši od trenutno veljavnega, bi pa bil zakonodajni postopek bolj učinkovit, saj ne bi bilo treba vlagati novel zakonov zaradi njihovih vsebinskih popravkov. S predlagano spremembo bi lahko kvaliteto zakonov izboljšali še preden bi bil zakonodajni postopek zaključen.

Zastavlja se namreč vprašanje, čemu služi hitro sprejemanje zakonov, če je njihova kakovost vprašljiva, če se v praksi različno tolmačijo in uporabljajo, vodijo do številnih sodnih sporov, do pogostih avtentičnih razlag in zakonskih sprememb in celo do razveljavitev pred Ustavnim sodiščem.¹⁰³ Bolj primerno in tudi bolj učinkovito je, če se primernost in kakovost zakonskih rešitev vsestransko preskusi v zakonodajnem postopku, kot šele takrat, ko je zakon že

With time the National Assembly will probably realize the usefulness of changing the law based on a filed veto, for this could prevent many issues (inconsistence of the law, new proposals for amending the law, constitutional disputes, etc.). Igličar¹⁰¹ believes that the current regulation of the reconsideration of an act procedure prevents the possible search for compromise solutions or improvement of the law proposal, because the National Council cannot propose amendments (whether within the reconsideration procedure itself or in previous phases of the legislation process) and is therefore significantly limited in its jurisdictions.

As previously mentioned, in arranging the legislative procedure the Constitution left for the National Assembly to autonomously regulate the reconsideration procedure within the Rules of Procedure. The procedure was established in 1993 and regulated very restrictively. No possibility of discussing and changing the law was given within the National Assembly's sessions. After adopting new Rules of Procedure in 2002, 5 years¹⁰² of exercising new regulations allowed the parliament to discuss the veto in the reconsideration procedure. In 2007, changes occurred: we reverted to previous regulations from 1993, when the first Rules were adopted, only granting the National Assembly the right to re-vote the law. The parliament therefore cannot open a discussion in the reconsideration procedure, only leaving the deputies with one option in case they want to introduce their views on the Council's veto and that is the institute of reasoning their votes.

103 Širše: Ribičič, Ciril, 2003: Enodomen parlament ni učinkovit, v: Mozaik ustavnih sprememb, GV Založba, Ljubljana, str. 96-99 in The Efficiency of Parliamentary Leadership As Determined By the Standing Orders of the Slovene Parliament, v: L. D. Longley, A. Agh in D. Zajc (ur.): Parliamentary Members and Leaders – The Delicate Balance, Research Committee of Legislative Specialists of IPSA, 1998.

101 Igličar 2007, p. 492–494.

102 Until the Rules have been changed in 2007 (the Official Gazette of RS, no. 64/2007).

uveljavljen, saj je vsaka razveljavitev zakona, še zlasti ker praviloma do nje pride šele po več letni uporabi, povezana s težko premostljivimi vsebinskimi in finančnimi težavami.¹⁰⁴

Končno je treba poudariti, da bi takšna sprememba postopka ponovnega odločanja v Državnem zboru spodbujala k izboljšanju delovanja Državnega sveta. Tega bi nova možnost silila k temu, da bi se namesto splošnega zavračanja celotnega zakona osredotočil na posamezna sporna vprašanja. To bi vodilo do bolj tvornega delovanja Državnega sveta v zakonodajnem postopku. Državni svet bi lahko svojo energijo usmeril v izboljšanje kakovosti zakonskih predlogov in bi tudi svoje siceršnje delovanje (organiziranje posvetov, mednarodno sodelovanje itd.) bolj dosledno usklajeval z vsebino zakonodajnega programa Državnega zbora.

Sprememba postopka ponovnega odločanja v Državnem zboru bi zahtevala tudi spremembo dela Državnega sveta, ko bi odločal o predlogu veta. S spremembo postopka ponovnega odločanja v Poslovniku Državnega zbora se namreč Državni svet spodbuja, da namesto veta na celoten zakon konkretizira svoje nasprotovanje posameznim zakonskim rešitvam in v vetu navede predloge amandmajev. Državni svet bi moral temu prilagoditi pravno ureditev notranjega delovanja z ustrezno spremembo postopka v Poslovniku Državnega sveta. Spremenjen postopek o vložitvi suspenzivnega veta bi moral biti v Državnem svetu zelo zaprt, kar je posledica omejenega, sedemdnevnega roka, ki ga ima na voljo Državni svet za obravnavo in sprejem veta. Ta rok onemogoča zapleten

¹⁰⁴ Ilustrativen primer je bilo znižanje pokojnin za 26.000 upokojencev, kljub ostremu nasprotovanju pravne stroke in Komisije Državnega sveta za socialno varstvo, delo, zdravstvo in invalide, ki je opozarjala na nesprejemljivost ukinjanja pravic vojnim veteranom in žrtvam vojnega nasilja, ki ni v skladu s 50. členom Ustave. Posledice tega, da Državni zbor ni upošteval teh opozoril, bodo odpravljene šele več let potem, ko je Ustavno sodišče razveljavilo ta del Zakona za uravnoteženje javnih financ (ZUJF).

13.3.7. Changes in regulating the reconsideration procedure

Considering the Constitution, legal theory and the Constitutional Court's rulings, it is not only possible, but also adequate and necessary to change the reconsideration procedure in a way that it would no longer be merely a re-voting procedure, but a process that allows another deciding on the law's content.

This is why the Constitution should be changed in the section that regulates the veto. The veto regulation should also be excluded from the article that refers law promulgation (as it should be done with the entire reconsideration procedure) and grant it its own statutory arrangements. The existing arrangements allow the Rules of Procedure to be changed in parts that regulate the reconsideration procedure, but the procedure is not a suitable matter to be arranged in such a way, due to its importance in our legal system.

In the reconsideration procedure the possibility for the Council to propose amendments within the veto could be introduced, followed with the National Assembly's discussion of them at their sessions. The parliament would therefore, by deciding on the amendments and the law as a whole, adopt a final decision that could not be vetoed by the National Council.

The reconsideration procedure would not be complicated and time consuming, quite the opposite. It would be fast and provide solutions that would contribute to the law's quality. The changes described above would accelerate the legislation procedure, as the National Assembly and its responsible working bodies would be free from obligation to change and create the laws content. They would merely decide on adopting or rejecting the proposed amendment. The possibility of filing amendments would be taken from deputies, deputy groups and other

postopek v zvezi z obravnavo predloga za veto. Postopek bi moral biti kar se da hiter, saj je včasih, kot že navedeno, na voljo zelo malo časa za sklic in izvedbo seje. To pomeni, da bi moral biti postopek za sprejem veta z amandmaji zelo omejen in bi moral omogočiti službi Državnega sveta, predlagatelju zakona in Vladi dovolj časa, da pripravijo mnenje na predlagan amandma.

Pomembnejše od vprašanja, kaj pomeni sprememba ureditve postopka v zvezi z vetom in postopka ponovnega odločanja za Državni svet, je ugotovitev, da gre za spremembo, ki lahko vodi do bolj tvornega sodelovanja Državnega zbora in Državnega sveta pri sprejemanju bolj kakovostne zakonodaje.

13.3.8. Večanje učinkovitosti delovanja Državnega zbora

Kot rečeno, pri uvedbi možnosti spremembe zakona v postopku ponovnega odločanja na podlagi veta Državnega sveta ne gre za enostransko krepitev vloge Državnega sveta v razmerju do Državnega zbora. Gre za rešitev, ki prvenstveno krepi učinkovitost delovanja Državnega zbora. Državni zbor bi ostal ključni zakonodajalec in bi suvereno odločal o tem, ali in v katerih primerih bo pristal na spremembo zakona. To pomeni, da bi dobil Državni zbor za primer ponovnega odločanja o zakonu na podlagi suspenzivnega veta novo, tretjo možnost, ob dveh obstoječih, ki sta v mnogih primerih lahko obe slabi.

Učinkovitosti parlamenta ne smemo enačiti s hitrostjo sprejemanja zakonov. Že profesor Leonid Pitamic je v svojem delu *Država iz leta 1927* poudarjal prispevek drugega doma k preudarnejšemu zakonodajnemu odločanju, pri katerem je okrepljen vpliv stroke in oslavljen vpliv političnih strank. Tudi sodobna ustavnopravna teorija priznava, da zapleti, ki jih vnaša v delovanje parlamenta drugi dom niso sami sebi namen, temveč naj bi vodili do bolj kakovostne zakonodaje. To je zakonodaja, ki je

responsible working bodies within the National Assembly. The reconsideration procedure of an act procedure would not be longer as it currently is, but it would definitely be more efficient, since the law would not have to be amended for its content related corrections. Considering suggested changes, the quality of the law could be improved even before the legislative procedure concluded.

The quick adoption of laws is questionable if it leads to poor quality, differences in interpretations and execution in practice, several juridical disputes, frequent authentic explanations, law amendments and even annulments in front of the Constitutional Court.¹⁰³ It is more suitable and efficient to test the law's appropriateness and quality within the legislative procedure and not after its adoption. Every annulment of the law, especially because it is generally done after many years of usage, is connected to difficulty in surmounting content and economic issues.¹⁰⁴

Finally, it should be brought to consideration that such changes in the reconsideration procedure would lead to better functioning of the National Council. Instead of generally rejecting the law as a whole, the National Council would be by the new possibilities compelled to concentrate on the individual controversial questions. This would lead to more productive work of the Council within the legislation procedure. The National Council

103 More on that: dr. Ciril Ribičič, *Enodomen parlament ni učinkovit*, v: *Mozaik ustavnih sprememb*, GV Založba, Ljubljana, 2003, str. 96-99 in *The Efficiency of Parliamentary Leadership As Determined By the Standing Orders of the Slovene Parliament*, v: L. D. Longley, A. Agh in D. Zajc (ur.): *Parliamentary Members and Leaders – The Delicate Balance*, Research Committee of Legislative Specialists of IPSA, 1998.

104 Illustrative case of that was lowering of pensions of 26.000 retired citizens, despite strong opposition of legal profession and the National Assembly's Commission for Social care, Labour, Health and Disabled, who pointed out the unacceptability of abolishing the rights of war veterans and victims of the war, for it is not in accordance to the Constitution's Article 50. Consequences of the National Assembly not considering those warnings will only be eliminated several years after the Court's annulment of this part of the Fiscal Balance Act.

bolj premišljena in konsistentna in ne povzroča pogostih sprememb, povsem nasprotnih razumevanj, zahtev po avtentičnih razlagah, do sporov pred rednimi sodišči in razveljavitev pred ustavnim sodiščem ter obsodilnih sodb Evropskega sodišča za človekove pravice.¹⁰⁵

Drugi predlogi (poleg postopka ponovnega odločanja), ki bi okrepili položaj in vlogo Državnega sveta, so strožja večina, s katero bi bilo mogoče preglasovati veto (različni avtorji predlagajo, da bi se število zahtevanih glasov za ponoven sprejem zakona povečalo od sedanjih 46 glasov - večina vseh poslancev, na 50, kar znaša več kot 55 odstotkov vseh poslancev, na 54 glasov, kar znaša 3/5 vseh poslancev, ali celo na 60 glasov kar znaša 2/3 vseh poslancev). Vsako od teh povečanj bi povzročilo vsakokratni vladni koaliciji velike težave, ker sega prek navadne absolutne večine, ki je predpisana ne le za zavrnitev veta, temveč tudi za izvolitev predsednika Vlade. Tudi 46 glasov vladna koalicija ne doseže vedno zlahka, tako da mora že v času pripravljanja zakonov računati na to, da morajo biti rešitve take, da jih bo podprla vsaj velika večina koalicijskih poslancev. Vsako zaostrovanje večine za preglasovanje veta Državnega zbora (ki med drugim terja spremembo Ustave, in sicer njenega 91. člena), bi bržkone terjalo tudi jasno opredelitev nabora zadev, na katere bi se lahko veto nanašal (npr. lokalne zadeve, zdravstvo, kultura, šport ipd.). Brez tovrstne omejitve bi lahko krepitev Državnega sveta vodila do spopada dveh splošno-pristojnih domov. Drug način za okrepitev Državnega sveta bi predstavljala pristojnost sprejemanja zakonov enakopravno z Državnim zborom na nekaterih področjih iz njegove pristojnosti.¹⁰⁶

¹⁰⁵ Grad, Franc, Ribičič, Ciril, Štrus, Dušan, 2015: Spremembe Poslovnika Državnega zbora glede ponovnega odločanja o zakonu na podlagi veta Državnega sveta, Inštitut za ustavno pravo, Ljubljana, str. 2.

¹⁰⁶ Grad, Franc, Ribičič, Ciril, Štrus, Dušan, 2013: Ponovno odločanje o zakonu na podlagi veta Državnega sveta, ustavnopravno mnenje, Inštitut za ustavno pravo, Ljubljana, str. 29.

could focus on improving the law proposals' quality, and would adapt its way of work (organizing of consults, international cooperation, etc.) to the National Assembly's work regime, especially its legislative program.

Changing the reconsideration procedure in the National Assembly would demand modifying the work program of the National Council in parts that concern veto proposal. These changes, made in the National Assembly's Rules of Procedure, would encourage the Council to instead of vetoing the law as a whole, demand modification of just individual provisions of an act. Consequently, the veto should contain amendment proposals. The Council should adjust legal regulation of their internal functioning by adequate changing of the procedure in the National Council's Rules of Procedure. The changed suspensory veto procedure within the Council should be very concise, which is a logical consequence of the short seven day period the chamber has for discussing and filing the veto. This means that the procedure for adopting the veto with amendments ought to be very limited and should leave the working body of the Council, the law initiator, and the Government enough time to prepare their opinions on the submitted amendment.

Even more important than the question what influence will changing the regulation of veto and reconsideration procedure have on the Council, is finding that these changes can lead to more productive cooperation between the Council and the National Assembly in adopting legislation, that is of better quality.

13.3.8. Enhancing the efficiency of National Assembly's functioning

As said, introducing the possibility of changing the law within the reconsideration procedure based on filed veto is not an act of one sided empowerment of the Council



Če bi prestižne boje med parlamentarnima domovima zamenjalo tvorno sodelovanje, temeljni razlog za sprejem ali zavrnitev predlogov Državnega sveta ne bi bilo več vprašanje, kateri dom bo »zmagal«, temveč bi bilo odločilno to, katera rešitev spornega vprašanja je bolj smiselna in katera odločitev je bolj učinkovita oziroma racionalna.

Nihče ne more prisiliti Državnega zbora, da se odloči, da bo glasoval o spremembi posamezne rešitve v predlogu zakona, niti k temu, da bi rešitev, ki jo predlaga Državni svet, tudi sprejel. To pomeni, da bi Državni zbor dobil novo možnost, ki je sedaj nima, ne da bi izgubil suvereno oblast nad zakonodajnim postopkom. Navedeni konkretni primeri dokazujejo, da je bil Državni zbor že večkrat v situaciji, ko je moral izbirati med dvema slabima rešitvama in da se je večinoma odločil za sprejem zakona, kljub temu, da se je strinjal, da posamezna rešitev, zaradi katere je prišlo do veta, ni dobra. Tako je sledil nov, nepotreben postopek spreminjanja zakona, ali pa je bil ta postopek sprožen pozneje, ker je zakonska rešitev vodila do konfliktov in sodnih sporov, oziroma je celo prišlo do njene razveljavitve pred Ustavnim sodiščem.

13.3.9. *Ponovno odločanje in referendum*

Referendum je ena izmed oblik neposredne demokracije in ima v Ustavi pomembno mesto, pri čemer je tudi institut opredeljen precej široko. Zahteva po dvotretjinski relativni večini za sprejem zakona, ki ureja referendum, kaže na velik pomen, ki ga Ustava pripisuje temu institutu. Ustavno sodišče pri interpretaciji zakonske izvedbe te ustavne pravice upošteva navedeno izhodišče, kar pomeni, da ne uporablja restriktivnega pristopa in v dvomu interpretira ter uporablja zakonsko ureditev »in favorem« pravici do referenduma.

Ustavodajalec je leta 2013 spremenil ustavno ureditev referenduma, tako da lahko zahteva razpis referenduma

next to the static National Assembly. Quite the opposite, these changes actually primarily render the parliament's work more efficient. The National Assembly would remain the main legislator and would sovereignly decide if and in what cases the law amendment would be adopted. They would therefore get a new, third jurisdiction within the reconsideration procedure, in addition to the two they already have, which are in many cases both insufficient.

The efficiency of the parliament should not be measured with the speed of adopting the laws. Professor Leonid Pitamic in his monograph *Država* (The State) from 1927 pointed out the second chamber's contribution to a more reasonable legislative deciding, in which influences of the legal profession are enhanced, and influences of political parties are weakened. The modern constitutional theory admits that "complications" Council brings to the parliament's work are not a purpose for themselves, but lead to legislation of higher quality. Such legislation is therefore more thoughtful and consistent, and does not cause constant changes, difficulties in interpretations, authentic reasoning requests, juridical disputes, annulments in front of the Constitutional Court and convictive rulings of the European Court of Human Rights.¹⁰⁵

Other suggestions (besides the reconsideration procedure) that would strengthen the position and role of the National Council are a greater majority, with which the veto could be outvoted (different authors suggest that the number of required votes for re-adoption of the law should rise from current 46 – the majority of all deputies, to either 50 – more than 55 percent of all the deputies, 54 votes – 3/5 of all the deputies, or even 60 votes – 2/3 of all the deputies). Each of these enlargements would cause the coalition great trouble due to the fact that they require

105 Grad, F.; Ribičič, C., Štrus, D.: Spremembe Poslovnika Državnega zbora glede ponovnega odločanja o zakonu na podlagi veta Državnega sveta, Inštitut za ustavno pravo, Ljubljana, 2015, p. 2.

le še 40.000 volivcev, ne pa tudi tretjina poslancev in Državni svet. Ne glede na to spremembo, Državni zbor do danes še ni spremenil zakonske ureditve, čeprav mu ustavni zakon to nalaga v roku enega leta od uveljavitve ustavne spremembe.¹⁰⁷ Do uskladitve Zakona o referendumu in o ljudski iniciativi s spremembo Ustave se ta zakon smiselno uporablja.

Ustava ne določa roka za vložitev zahteve za razpis referenduma. Ker pa gre za referendum o uveljavitvi zakona, je to treba storiti še pred objavo in uveljavitvijo zakona. Zato Zakon o referendumu in o ljudski iniciativi¹⁰⁸ v II. členu ureja, da je treba pobudo za razpis referenduma vložiti v sedmih dneh po sprejemu zakona. Pobudnik zahteve v sedmih dneh po sprejemu zakona obvesti o svoji pobudi predsednika Državnega zbora. Pobuda mora vsebovati opredeljeno zahtevo, predpisane formalne in vsebinske zahteve in mora biti podprta s podpisi najmanj dva tisoč petsto volivcev. Rok za zbiranje podpisov volivcev za podporo zahtevi je petintrideset dni, zahteva pa se lahko vloži najpozneje v sedmih dneh po preteku roka za zbiranje podpisov volivcev.

Državni zbor mora v primeru vložene pobude oziroma zahteve za razpis referenduma zadržati objavo zakona. V primeru vložitve pobude za razpis naknadnega referenduma Državni zbor zakona ne sme poslati v objavo dokler teče postopek z referendumom. Zadržanje objave zakona je pomembna pravna posledica vložene zahteve oziroma pobude za naknadni zakonodajni referendum. Le s tem, da se prepreči objava zakona do dokončanja referendumskega postopka (in posledično prepreči tudi uveljavitev zakona), se lahko zagotovi učinkovitost naknadnega zakonodajnega referenduma kot oblike neposrednega odločanja volivcev o zavrnitvi zakona. Pri naknadnem,

¹⁰⁷ Gl. Uradni list RS, št. 47/13.

¹⁰⁸ Zakon o referendumu in o ljudski iniciativi, Uradni list RS, št. 26/07 – ZRLI-UPB₂, 47/13.

more than the bare absolute majority which is needed not only to reject the veto, but also for electing the Prime Minister. Even 46 votes is a difficult goal to reach for the coalition. They must adapt their law preparing procedure in a way that the resulting act would most likely be supported by the great majority of the coalition's deputies. Each change in veto outvoting majority (which demands amending the Constitution, specifically Article 91) demands precise definition of matters, which the veto could refer to (e.g. local matters, health, culture, sports, etc.). Without this kind of limitation, strengthening National Council's jurisdictions could lead to a conflict of interests between the two generally-competent chambers. Another way of strengthening the Council represents a potential jurisdiction to adopt laws as an equal to the National Assembly in some areas of its functioning.¹⁰⁶

If the collisions between the two chambers were replaced by productive cooperation, the game of "who won" in matters of rejecting or adopting the National Council's proposals would no longer be an issue. The deciding factor would therefore become the efficiency, rationality, and plausibility of the solutions of the conflicting matter.

The National Assembly cannot be forced either into voting for or against an individual solution in the law proposal, or into adopting the proposed solution of the National Council. This means that with the mentioned possibility of changing the vetoed law within the reconsideration procedure, the National Assembly would obtain a new potential option for action, without the loss of its sovereign authority over the legislative procedure. The given examples indicate that the parliament had already found itself trapped in a situation, in which it had to choose between two poor solutions. In most cases, the

¹⁰⁶ Grad, F.; Ribičič, C.: Ponovno odločanje o zakonu na podlagi veta Državnega sveta, ustavnopravno mnenje, Inštitut za ustavno pravo, Ljubljana, 2013, p. 29.

zakonodajnem referendumu volivci namreč odločajo o zakonu, ki ga je zakonodajalec sprejel, za njegovo uveljavitev pa so potrebni še razglasitev, objava in potek vakacijskega roka. Naknadni, razveljavitveni, zakonodajni referendum bi izgubil svoj smisel, če bi bil pred njegovo izvedbo zakon že uveljavljen. Zahteva za razpis naknadnega referenduma namreč pomeni zahtevo, da o tem, ali naj zakon, ki ga je sprejel zakonodajalec, obstoji ali ne, dokončno odloči ljudstvo samo, neposredno. Eksistenca določenega zakona je torej odvisna od volje volivcev, od njihovega glasovanja, odločanja na referendumu in ne več le od glasovanja, odločanja poslancev kot predstavnikov ljudstva v zakonodajnem organu. Dr. Leonid Pitamic v tej zvezi govori o „ljudskem vetu“.¹⁰⁹ Zakon, ki ni bil potrjen na referendumu, ni nastal, ga ni. Gre za izraz načela ljudske suverenosti, po katerem ima oblast ljudstvo, ki lahko – če se ne strinja s svojimi izvoljenimi predstavniki, prek katerih izvršuje oblast posredno – samo prevzame nazaj svojo izvirno pravico, da odloča o javnih zadevah. Odločitev na referendumu neposredno s strani volivcev ima močnejšo veljavo od odločitve njihovih izvoljenih predstavnikov in od volje volivcev je odvisna dokončna odločitev o tem, ali bo nek zakon nastal ali ne.¹¹⁰

Glede teka rokov za vložitev veta, pobude oziroma zahteve za razpis referenduma in razglasitve zakona je Ustavno sodišče odločalo že leta 2001. Ta odločitev Ustavnega sodišča¹¹¹ je, ne glede na drugačno ustavno in poslovniško ureditev v tistem času, še danes aktualna. Ustavno sodišče je ugotovilo, da sta potem, ko Državni zbor s predpisano večino zakon sprejme, za dokončen sprejem zakona dve oviri (in ne ena, kot je to določal Poslovnik Državnega zbora): možnost suspenzivnega veta Državnega sveta in možnost naknadnega zakonodajnega referenduma. Če Državni svet vloži suspenzivni veto,

¹⁰⁹ Pitamic, Leonid, 1927: Država, Družba sv. Mohorja, Ljubljana, v izdaji Cankarjeve založbe, Ljubljana, 1996, str. 80.

¹¹⁰ Odločba US, št. U-I-104/01, 2001.

¹¹¹ Odločba Ustavnega sodišča, št. U-I-104/01, 2001.

National Assembly adopted such a law despite knowing and agreeing that the act is not adequate to meet its needs. Consequently, a new, unnecessary procedure of adopting the law was either proposed, or it followed because such an act was a cause of conflicts and juridical disputes. Many times, the law was also annulled by the Constitutional Court.

13.3.9. *Law reconsideration and the referendum*

Referendum is one form of direct democracy and holds a special place in the Constitution, where the institute is quite broadly regulated. The request for two thirds relative majority that needs to be reached in order to adopt the law regulating the referendum indicates the great value of this constitution-based institute. In its process of interpreting the regulation of this constitutional right within a law, the Constitutional Court follows the mentioned starting point and therefore does not use restrictive approach, rather pursuing the “in favorem” principle when in doubt whether the referendum is needed.

In 2013 constitutional regulation of the referendum was changed in a way that from then on, only the 40.000 voters can request a calling of a referendum, and not also a third of deputies and the National Council as it was previously required. Despite the fact that constitutional changes occurred, the National Assembly still has not changed the referendum's regulation inside the law that concerns this matter. The constitutional statute requires them to do so in a one year period, starting from the day changes were adopted.¹⁰⁷ Until the Referendum and Popular Initiative Act, which should regulate the referendum, is harmonized with the amended Constitution, it should be used in accordance with the constitutional changes.

¹⁰⁷ Official Gazette RS, no. 47/13.

potem mora Državni zbor ponovno odločati o zakonu in takrat lahko zakon z zahtevano strožjo večino sprejme ali pa ne. Poslovnik Državnega zbora upošteva to možnost kot „oviro“ za razglasitev zakona: zakon se pošlje v razglasitev šele potem, ko Državni svet sporoči, da ne bo vložil suspenzivnega veta, oziroma v primeru, če Državni svet vloži suspenzivni veto, šele potem, ko Državni zbor pri ponovnem odločanju zakon sprejme.

Smisel naknadnega zakonodajnega referenduma je, da volivci odločajo o potrditvi ali zavrnitvi določenega zakona, ki ga je Državni zbor že sprejel in za katerega je torej gotovo, da bi - če ne bi bilo referenduma - bil uveljavljen. Če bi sprejeli razlago, da je treba pobudo oziroma zahtevo za razpis naknadnega zakonodajnega referenduma vložiti v vsakem primeru v roku sedmih dni od „prvega“ sprejema zakona, potem bi postala v primeru, če bi bil v tem roku vložen tudi suspenzivni veto, takšna pobuda oziroma zahteva nesmiselna. Res je, da Državni zbor po suspenzivnem vetu lahko zakon le ponovno sprejme v celoti, v nespremenjenem besedilu, in torej volivci in predlagatelji referenduma že poznajo vsebino zakona, ki naj bi bil sprejet, vendar, kar je bistveno, ne vedo, ali bo tak zakon sploh sprejet ali ne. Razlaga, da se rok za vložitev pobude oziroma zahteve za razpis naknadnega zakonodajnega referenduma tudi v primeru vloženega suspenzivnega veta šteje od „prvega“ sprejema zakona v Državnem zboru dalje, z vidika Ustave ni sprejemljiva tudi zaradi ustavno opredeljenega položaja Državnega sveta.

To tudi pomeni, da mora biti, upoštevajoč veljavno ureditev zakonodajnega referenduma v zakonu kot izpeljavo ustavne pravice do referenduma, v vsakem primeru (bodisi, da je zakon sprejet pri „prvem“ glasovanju v Državnem zboru in ni vložen veto, bodisi da je vložen veto in je zakon sprejet po ponovnem glasovanju) pobuda oziroma zahteva za razpis referenduma vložena v sedmih dneh po sprejemu zakona. Če je Državni svet sprejel

The Constitution does not specify a period for the calling of a referendum. But considering it is a referendum for law adoption, it needs to be done before the law is published and enforced. This is why the Referendum and Popular Initiative Act¹⁰⁸ in Article 11 states, that the initiative for calling of a referendum should be filed within the 7 day period since the law has been adopted. The initiator informs the President of National Assembly about their intentions within 7 days, starting from the day the law was adopted. The initiative should contain a reasoned request itself, required formal and content-related requests and needs to be supported with signatures of at least 2500 voters. The period for collecting signatures of voters is thirty five days and the request can be filled at the latest seven days after the signature collecting period has come to pass.

In case of filed calling of a referendum, the National Assembly must withhold the publication of the law. If there is a call of subsequent referendum the law publication has to be withheld until the first referendum procedure has been completed. Withholding of the law's publishing is an important legal consequence of the filed calling of a subsequent referendum. Only by preventing the law to be published until the referendum procedure is completed (therefore preventing law's enforcement) can efficiency of the subsequent legislative referendum be granted. The latter presents an important form of voters' direct deciding regarding the law, that was adopted by the legislator. To start exercising the law, besides the voters' decision on a referendum, promulgation, publication and the *vaccatio legis*' expiration all need to be done. The subsequent annulling legislative referendum would have lost its meaning if the law had been introduced even before the procedure was completed. The existence of an

108 Zakon o referendumu in o ljudski iniciativi, Official Gazette RS, no. 26/07 – ZRLI-UPB2, 47/13.

suspenzivni veto, pa mora biti pobuda za referendum vložena v sedmih dneh od „drugega“ sprejema zakona v Državnem zboru. Če bi bila vložena pobuda ali zahteva za referendum po „prvem“ sprejemu zakona, nato pa v roku tudi suspenzivni veto, potem bi postala pobuda ali zahteva za referendum brezpredmetna, saj bi moral Državni zbor ponovno odločati o zakonu in do takrat ne bi bilo jasno, ali bi bil zakon sprejet ali ne. Šele, če je zakon sprejet pri ponovnem odločanju, lahko pooblaščen predlagatelj vložijo zahtevo oziroma pobudo. Od njihove volje je odvisno, ali jo bodo (ponovno) vložili ali ne.¹¹² Novela Zakona o referendumu in o ljudski iniciativi¹¹³ je zgoraj navedeno odločbo Ustavnega sodišča tudi uzakonila in s tem odpravila vsak dvom glede začetka teka roka za vložitev pobude oziroma zahteve za razpis naknadnega referenduma.

Zgoraj navedena odločba Ustavnega sodišča je aktualna še danes, tudi pri morebitni spremembi postopka ponovnega odločanja. To pomeni, da bi pobuda ali zahteva za referendum postala brezpredmetna, če bi se v postopku ponovnega odločanja zakon spremenil. Dokler ni jasno, ali bo zakon sprejet ali ne in kakšna bo njegova končna vsebina, pobude ni mogoče vložiti. Nova ureditev postopka ponovnega odločanja bi omogočila, da bi bilo možno popraviti zakon tudi potem, ko bi pobudniki že »grozili« z vložitvijo pobude za razpis referenduma in s tem z odložitvijo razglasitve in uveljavitve zakona. Postopek ponovnega odločanja bi v takšnem primeru omogočal popravo zakona tako, da se referendumski pobudniki po ponovnem odločanju o zakonu ne bi odločili za vložitev

individual act depends on the voters' decision, expressed at the referendum, and is no longer a sole matter of the deputies' voting, even though they represent the will of the people within the legislative body. Dr. Leonid Pitamic referred the institute as the "people's veto".¹⁰⁹ A law that has not been confirmed at the referendum does not exist. It is a reflection of people's sovereignty by which the people have the power to take back their innate right to make decisions in public affairs if they are dissatisfied with the decisions made by their elected representatives. The decision made at the referendum directly by the voters is stronger than any decision of elected representatives, and the decision of the first is crucial for law's coming to life.¹¹⁰

Concerning the expiration of periods for filing the veto, calling for a referendum, and law promulgation, the Constitutional Court already made their decision in 2001. The decision of the Court¹¹¹ is still in effect today, despite the difference in regulation of the procedure rules and the Constitution at that time. The Court found that after adopting the law by the National Assembly with the prescribed majority, two things limit its final adoption (and not only one as the previous National Assembly's Rules of Procedure stated): the possibility of suspensory veto filed by the National Council, and the possibility of subsequent referendum. If a veto is filed, the parliament must reconsider the act and either adopt it or not, with stricter majority that needs to be reached. The National Assembly's Rules of Procedure define this option as a "barrier"

112 Drugačna interpretacija določb o teku roka bi zakonodajni referendum, ki je predviden kot fakultativni, približala značilnostim obligatornega referenduma. Slednjega veljavna ureditev referenduma v zakonu, kot izpeljava ustavnih določb o referendumu in sodelovanju pri upravljanju javnih zadev, ne pozna, saj bi to pomenilo, da se že pred sprejemom zakona v Državnem zboru z gotovostjo vé, da bo v primeru sprejema zakona o tem zakonu izveden še referendum.

113 Uradni list RS, št. 59/2001.

109 Pitamic, Leonid, 1927: Država, Družba sv. Mohorja, Ljubljana, v izdaji Cankarjeve založbe, Ljubljana, 1996, str. 80.

110 Grad, F.; Ribičič, C., Štrus, D.: Nekatere dileme v zvezi s spremembami Poslovnika Državnega sveta glede ponovnega odločanja o zakonu, Inštitut za ustavno pravo, Ljubljana, 2016, p. 9. Grad, F.; Ribičič, C., Štrus, D.: Nekatere dileme v zvezi s spremembami Poslovnika Državnega sveta glede ponovnega odločanja o zakonu, Inštitut za ustavno pravo, Ljubljana, 2016, p. 9.

111 Ruling of the Constitutional Court, no. U-I-104/01, 2001.

pobude, saj bi bil zakon popravljen in ne bi bilo več razloga za njeno vložitev. Sprememba postopka ponovnega odločanje se tako kaže kot ena izmed možnih rešitev v primeru grožnje z referendumom, kar je dodatna varovalka v sistemu zavor in ravnesij v ustavnem sistemu države.

13.4. Zahteva za presojo ustavnosti in zakonitosti

Ena izmed redkih pristojnosti, s katero Državni svet ni v neposrednem razmerju z Državnim zborom, je zahteva za presojo ustavnosti in zakonitosti aktov. Državni svet je v tem primeru v neposrednem razmerju z Ustavnim sodiščem in ima pristojnost, s katero lahko v skladu z Zakonom o ustavnem sodišču¹¹⁴ na Ustavno sodišče naslovi zahtevo za oceno ustavnosti in zakonitosti aktov.

Pobudo za zahtevo za presojo ustavnosti lahko poda vsak član Državnega sveta, pri čemer Državni svet o njej glasuje z navadno večino. Gre za zelo pomembno pristojnost Državnega sveta, ki jo uporabi pogosto, še posebej po neuspelem vetu, vendar to stori samo, če meni, da je akt oziroma del akta v neskladju z Ustavo ali zakonom.

Z zahtevo za presojo ustavnosti Državni svet ne posega več v zakonodajni postopek, ampak preverja ustavno skladnost zakonov po končanem zakonodajnem postopku. Postopki za presojo ustavnosti so dolgotrajni, saj od vložitve zahteve za presojo ustavnosti do končne odločitve Ustavnega sodišča lahko traja več let. V kolikor gre za nujne zadeve, ki jih je treba prednostno obravnavati, lahko Državni svet zahteva prednostno obravnavo na Ustavnem sodišču in začasno zadržanje spornega zakona. Ustavno sodišče prednostno obravnava tiste zadeve, za katere je določeno, da jih mora sodišče obravnavati in o njih odločiti hitro, ali za katere zakon določa tudi rok.¹¹⁵ Ustavno sodišče sme do končne odločitve v celoti ali delno zadržati

¹¹⁴ Zakon o ustavnem sodišču, Uradni list RS, št. 15/94, 64/01, čl. 23.

¹¹⁵ Gl. 46. člen Poslovnika Ustavnega sodišča, Uradni list RS, št. 86/07, 54/10 in 56/11.

for law promulgation; the law can only be promulgated after the Council decides not to file the veto or, if the suspensory veto is filed, only after the law is adopted for the second time in the reconsideration procedure.

The meaning of the subsequent legislative referendum lies in voters deciding about confirmation or rejection of a certain act that was already passed in the National Assembly and which would certainly be introduced if there were no referendum. If we were to assess that the right interpretation is that the initiative or the request for the call of subsequent legislative referendum should be filed in any case within seven days of when the act was adopted for »the first time«, then such initiative or request would become pointless if the suspensory veto would be filed. The National Assembly can again adopt the act only as a whole and only in the same wording, so the voters and the proposers already know the content of the act that would have been adopted, however they don't know the essential part – whether the act will be adopted or not. The interpretation that says that the period to file the initiative or the request for the call of the subsequent legislative referendum runs in the case of the adopted suspensory veto from the date when the act was adopted for »the first time« in the National Assembly, does not comply with the Constitution also because of the constitutional position of the National Council.

That means that regarding the current regulation of the legislative referendum in the laws as the deriving concept from the constitutional right to referendum, the initiative or the request for the call of the referendum must be in any case (if the power of veto is not exercised when the act is adopted for »the first time, « or if the National Council files a veto and the act is adopted after the repeated vote) filed in seven days after the day when the act is adopted. If the National Council adopted the suspensory veto, the initiative for the referendum should be filed



izvršitev zakona, če bi zaradi njegovega izvrševanja lahko nastale težko popravljive škodljive posledice.¹¹⁶

Kot že navedeno, je v 25-ih letih delovanja Državni svet vložil 53 zahtev za presojo ustavnosti in zakonitosti. Ustavno sodišče je v 22-ih primerih ugotovilo, da je napadeni akt v celoti ali deloma v nasprotju z Ustavo. V šestih primerih je Državni svet zahtevo umaknil ali pa je Ustavno sodišče zahtevo zavrglo oziroma ustavilo postopek, ker je bil napadeni akt v času odločanja na Ustavnem sodišču v spornem delu že spremenjen. To pomeni, da je bila protiustavnost odpravljena, še preden je Ustavno sodišče o njej odločalo. V 17-ih primerih Ustavno sodišče ni ugotovilo neskladnosti z Ustavo, o osmih zahtevah za presojo ustavnosti pa Ustavno sodišče še ni odločalo.¹¹⁷ Praksa zahteve za presojo ustavnosti in zakonitosti kaže, da gre za zelo pomembno pristojnost Državnega sveta, ki se je Državni svet poslužuje več kot desetkrat na mandat. Njegova uspešnost je več kot 40-odstotna. Če temu prištejemo še primere, ko je bila protiustavna zakonska ureditev spremenjena v Državnem zboru še pred odločanjem Ustavnega sodišča, je pri izvajanju te pristojnosti Državni svet še bolj uspešen.

13.5. Mnenja komisij in Državnega sveta

Najbolj poznana in odmevna pristojnost Državnega sveta je pristojnost vlaganja veta na zakon, ki pa ni tudi najbolj pogosto uporabljena pristojnost Državnega sveta. Mnogo pomembnejše je vsakodnevno, skoraj nevidno vplivanje Državnega sveta na zakonodajni postopek prek mnenj Državnega sveta in njegovih komisij. Teh pa, kot že navedeno,

¹¹⁶ Gl. 39. člen Zakona o Ustavnem sodišču, Uradni list RS, št. 64/07 – UPB in 109/12.

¹¹⁷ Podatki izhajajo iz letnih poročil in poročil o delu Državnega sveta, ki so dostopni na URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. Glej tudi Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

within seven days from National Assembly's adoption of the act for »the second time. « If the initiative or the request for the referendum is filed after the act is adopted for »the first time« and after that the National Council files a suspensory veto in the appointed time, then the initiative or the request wouldn't have any purpose, because the National Assembly would have to vote again on the act and until then it would not be clear if the act was passed or not. Entitled proposers can file the initiative or the request only when the act has passed the second vote. It depends on their will if they will file it (again) or not.¹¹² The amended Referendum and Popular Initiative Act¹¹³ has implemented the aforementioned decision of the Constitutional Court and dismissed any doubt about the start of the time period for the filing of the initiative or the request for the call of the subsequent referendum.

This decision of the Constitutional Court is still up-to-date because of the possibility of revising the reconsideration of an act procedure. That means that an initiative or a request would be without purpose if the act were changed in reconsideration of an act procedure. The initiative cannot be filed until it is clear whether the act will be adopted and what its final content will be. The new regulation of reconsideration of an act procedure would enable changes of the act even after the initiators would »threaten« with filing the initiative for the call of the referendum, causing a delay of the promulgation and of the introduction of an act. The reconsideration of

¹¹² A different interpretation of the provisions about the running of time would bring legislative referendum, that should be a facultative referendum, closer to the properties of the obligatory one. The latter doesn't exist in the current regulation of the referendum as the deriving concept from the constitutional provisions about the referendum and the cooperation with the management of public affairs, because if it would, that would mean, that even before the National Assembly adopts an act it would be already known, that the referendum would be held on that act.

¹¹³ Official Gazette RS, no. 59/2001.

ne posreduje zakonodajalcu le Državni svet, ampak tudi njegova delovna telesa - komisije, ki svoja mnenja redno pošiljajo delovnim telesom Državnega zbora. Iz te pristojnosti je najbolj nazorno razvidna svetovalna vloga Državnega sveta.

Državni svet lahko na podlagi Ustave daje mnenja o vseh zadevah iz pristojnosti Državnega zbora. To ustavno določilo pomeni, da lahko Državni svet daje mnenja ne samo k zakonom, ampak tudi k spremembam Ustave, državnemu proračunu, deklaracijam, zadevam Evropske unije, imenovanjem in podobno. Ustava določa tudi, da mora Državni svet izreči mnenje o posamezni zadevi na zahtevo Državnega zbora.¹¹⁸ Državni zbor mora v tem primeru določiti tudi rok, v katerem želi dobiti mnenje Državnega sveta. Čeprav v Ustavi in Poslovniku Državnega zbora ni izrecno navedeno, je razumljivo, da lahko Državni zbor zahteva mnenje Državnega sveta samo glede zadev iz svoje pristojnosti. Mnenje za Državni zbor ni obvezujoče, vendar ga mora obravnavati in se nanj odzvati ter o svojem stališču obvestiti Državni svet.¹¹⁹ V petindvajsetletni praksi delovanja obeh domov ni bilo primera, ko bi Državni zbor od Državnega sveta zahteval mnenje. Z mnenji, ki jih sprejema in daje Državnemu zboru o vseh zadevah iz njegove pristojnosti, Državni svet posreduje in uveljavlja interese vseh interesnih skupin, ki so zastopane v Državnem svetu.

Po tej poti Državni svet in njegova delovna telesa pogosto prispevajo k dograjevanju rešitev v zakonskih predlogih, ne da bi to povzročalo nepotrebne zaplete in soočanja med člani obeh domov. Tisti, ki dvomijo v koristnost obstoja Državnega sveta, ne vedo, kako izjemno razvejana in vsebinsko bogata je aktivnost komisij Državnega sveta. Medtem ko je v 25-ih letih Državni svet sprejel in poslal Državnemu zboru in njegovim delovnim

¹¹⁸ Gl. 97. člen Ustave.

¹¹⁹ Tako Grad, Franc, 2002: Parlament in vlada, ČZ Uradni list RS, Ljubljana, str. 266.

an act procedure would in such a case enable changing the act in a way that after the reconsideration of an act, the initiators of the referendum wouldn't file the initiative because the changes of the act would eliminate the reason for filing it. The change of reconsideration of an act procedure is one of the possible solutions in the case of a threat with the referendum, which is an additional safeguard in the system of checks and balances in the constitutional system of the state.

13.4. Request for a ruling on the constitutionality and legality of legislation

The authority to request a ruling on the constitutionality and legality of legislation is one of the few jurisdictions with which the National Council is not in direct relations with the National Assembly. In this case, it is directly appealing the Constitutional Court, in accordance with its authority, as in compliance with the Constitutional Court Act,¹¹⁴ to request a ruling on the constitutionality and legality of legislation from the Constitutional Court.

Any member of the National Council can file the initiative to request a ruling on the constitutionality, needing only a simple majority of votes in the National Council for it to pass. It is a very important jurisdiction of the National Council, and therefore used frequently, often after an unsuccessful veto. However, it is still used it only after assessing that an act or a part of an act is not in accordance with the Constitution or with the legislation.

With a request for a ruling on the constitutionality, the National Council does not interfere with the legislative procedure, but examines constitutionality of acts after the completion of the procedure. The procedure of a ruling on the constitutionality of acts is of long duration,

¹¹⁴ Constitutional Court Act, Official Gazette RS, no. 15/1994, 64/2001, ar. 23.

telesom preko 500 mnenj, so v tem obdobju komisije Državnega sveta poslane delovnim telesom Državnega zbora več kot 2800 mnenj. Največ mnenj so komisije Državnega sveta oblikovale ob sprejemanju zakonov s področja državne ureditve in gospodarstva, lokalne samouprave in družbenih dejavnosti.¹²⁰

Z mnenji Državni svet in njegova delovna telesa sodelujejo v zakonodajnem postopku. Predloge zakonov v Državnem svetu namreč najprej obravnavajo komisije Državnega sveta, ki sprejem mnenj bodisi predlagajo Državnemu svetu bodisi posredujejo mnenja neposredno matičnim delovnim telesom Državnega zbora. V skladu s prejšnjim Poslovnikom Državnega zbora¹²¹ so delovna telesa Državnega sveta lahko pripravljala mnenja, ko so matična delovna telesa Državnega zbora obravnavala predloge zakonov v prvi obravnavi. V prvi obravnavi je bila opravljena predstavitev predloga zakona in razprava o razlogih, ki so zahtevani za sprejem zakona ter o načelih in ciljeh zakonskega predloga, tako da so običajno tudi mnenja delovnih teles Državnega sveta obsegala mnenje o razlogih za sprejem predloga zakona ter o njegovih načelih in ciljeh.

Veljavni Poslovnik Državnega zbora iz leta 2002 pa je spremenil naravo in koncept prve obravnave zakonodajnega postopka tako, da je določil, da se prva obravnava opravi s posredovanjem predloga zakona poslancem.¹²² Delovna telesa Državnega zbora nimajo v prvi obravnavi nikakršne vloge, tako da bi bilo brez pomena, da bi jim

120 Podatki izhajajo iz letnih poročil in poročil o delu Državnega sveta, ki so dostopni na URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. Glej tudi Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

121 Poslovnik Državnega zbora, Uradni list RS, št. 40/93, 80/94, 28/96, 26/97, 46/00, 3/01, 9/01 in 13/01, ki je veljal do 15. 7. 2002.

122 Gl. 121. člen Poslovnika Državnega zbora, Uradni list RS, št. 92/07 – UPB, 105/10 in 80/13.

taking several years for the Constitutional Court to bring the procedure from filing of the request to the final ruling. If the case is considered to be urgent and consequently needs to be considered as a matter of priority, the National Council can demand a preferential treatment before the Constitutional Court and a temporary suspension of the act. The Constitutional Court considers the case as a matter of priority if the legislation demands it or if the law provides a time limit.¹¹⁵ The Constitutional Court can, if the act's execution would cause damage that would be difficult to remedy, temporarily – completely or partially, suspend the act until the final ruling is issued.¹¹⁶

As previously stated, over the past 25 years the National Council had submitted 53 requests for a ruling on the constitutionality and legality. The Constitutional Court had in 22 cases ruled in favor of the National Council. In six cases, the National Council had withdrawn the request or the Constitutional Court had dismissed and stopped the procedure, as the act was already changed in the disputable part in the time when the procedure was running before the Constitutional Court.

That means that the unconstitutional part ceased to exist even before the Constitutional Court could rule on the case. In 17 cases, the Constitutional Court ruled that the act was in accordance with the constitution. Eight cases are still pending before the court.¹¹⁷ The practice of the request for a ruling on the constitutionality and

115 Ar. 46. of the Rules of procedure of the Constitutional Court, Official Gazette RS no. 86/07, 54/10 and 56/11.

116 Ar. 39. of the Constitutional Court Act, Official Gazette RS, no. 64/07 – UPB and 109/12.

117 The data is gathered from the annual reports and reports on activities of the National Council, available at: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. See also Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

delovna telesa Državnega sveta posredovala svoja mnenja o predlogih zakonov. Mnenje bi lahko Državnemu zboru v prvi obravnavi poslal le Državni svet, čeprav se v praksi dogaja, da mnenja k predlogom zakonov v prvi obravnavi pošiljajo tudi komisije Državnega sveta. Delovna telesa Državnega sveta tako pripravljajo mnenja o predlogih zakonov predvsem za drugo obravnavo, ki se najprej opravi v delovnih telesih Državnega zbora, ki ni splošna, ampak v njenem sklopu matično delovno telo opravi razpravo in glasovanje o posameznih členih predloga zakona. Torej je primerno, da oblikujejo delovna telesa Državnega sveta mnenja s konkretnimi predlogi in pripombami.

V praksi želijo na matičnem delovnem telesu prejeti amandmaje od Državnega sveta in njegovih delovnih teles, saj si v drugi obravnavi, ko obravnavajo člene zakona in k njim predloženim amandmajem, s splošnim mnenjem težje pomagajo. Posledično so matičnim delovnim telesom konkretni predlogi sprememb in dopolnitev predlaganih členov še najbolj v pomoč. Takšna praksa se tudi izvaja, ne glede na to, da Ustava ne določa, da ima Državni svet pravico vlagati amandmaje. Državni zbor kljub takšni praksi še vedno ni spremenil Poslovnika tako, da bi ta določal pristojnost Državnega sveta in njegovih delovnih teles predlagati amandmaje v drugi obravnavi. Ker Državni svet ni upravičen predlagatelj amandmajev v drugi obravnavi zakonodajnega postopka, Državnemu zboru in njegovim delovnim telesom amandmajev, ki jih v mnenju pripravi Državni svet ali njegova komisija, ni potrebno obravnavati. Ne glede na to jih lahko obravnava in sprejme, če jih povzame in predlaga matično delovno telo Državnega zbora ali drug upravičen predlagatelj (npr. poslanec, poslanska skupina) ter so nato izglasovani na seji delovnega telesa. Kot taki nato postanejo del dopolnjenega predloga zakona, ki je sestavni del poročila delovnega telesa Državnega zbora.

legality shows it is a very important jurisdiction of the National Council, which exercises it on average more than ten times in a mandate. Its success rate is more than 40 percent. If we also take into consideration the cases in which the unconstitutional provisions were changed by the National Assembly prior to the Constitutional Court's ruling on it, the National Council is even more successful in exercising this power.

13.5. Opinions of the National Council and its commissions

The most well-known and resounding jurisdiction of the National Council is its power to file a veto on an act, but it is not the most common one. Much more important power of the National Council is its daily and almost invisible impact on the legislation procedure with its and its commissions' opinions. Those are not conveyed only to the legislator by the National Council, as previously stated, but also by its working bodies – the commissions, which send its opinions regularly to the working bodies of the National Assembly. From this jurisdiction, the advisory function of the National Council is most evident.

The Constitution gives the power to the National Council to present opinions on all matters of the jurisdiction of the National Assembly. This constitutional provision means that the National Council can give opinions not only on laws, but also on revision of the constitution, state budget, declarations, EU affairs, appointments etc. The Constitution also dictates that National Council must give an opinion about a particular matter on the request of the National Assembly.¹¹⁸ The National Assembly must in that case also determine a period in which the National Council must give its opinion. Although

118 Ar. 97. of the Constitution.



Dajanje mnenj je pristojnost Državnega sveta, s katero opozarja na interese, ki so bili ob obravnavi posameznega zakona posebej izpostavljeni in s tem kot predstavniško telo zakonodajne veje oblasti ustavno določeno pristojnost - funkcijo svetovanja. V nasprotju z odločilnim vetom, pri pristojnosti dajanja mnenj ni mogoče statistično oceniti njihove učinkovitosti, saj se mnenja uveljavljajo v zakonodajnem postopku v Državnem zboru na različne načine. Kljub temu pa na splošno velja, da se mnenja, v katerih so poudarjeni interesi članov Državnega sveta, prelivajo v predloge zakonov, še posebej, če predloge rešitev iz mnenj „posvojijo“ matična delovna telesa Državnega zbora.

Državni svet in njegove komisije se pri sodelovanju v zakonodajnem postopku ne opirajo samo na stališča svetnikov, temveč na zelo širok krog predstavnikov civilne družbe, ki se udeležujejo sej njegovih delovnih teles oziroma se zbirajo na njegovih posvetih.

13.5.1. *Mnenja v nujnih in skrajšanih postopkih*

Državni svet ima v rednem zakonodajnem postopku dovolj časa za predložitev mnenja k posamezni zadevi, v nujnem in skrajšanem zakonodajnem postopku, ko je postopek sprejemanja zakonov racionaliziran, pa mora razpolagati z rokom, v katerem lahko predloži svoje mnenje, sicer je prikrajšan v izvajanju te ustavne pristojnosti. Pristojnost dajanja mnenj Državnega sveta je obravnavalo Ustavno sodišče¹²³, ki je ugotovilo, da prejšnji Poslovník Državnega zbora v primeru izredne seje ter hitrega (sedaj

it is not expressly stated in the Constitution or in the Rules of Procedure of the National Assembly, it is clear that the National Assembly can request an opinion from the National Council only on the matters of its own jurisdiction. While the opinion is not binding for the National Assembly, it has to deliberate on it and respond to it, notifying National Council of its viewpoint.¹¹⁹ In 25 years of practice of both houses, there was no case of National Assembly requesting an opinion from the National Council. With the opinions adopted and given to the National Assembly, concerning all matters from its field of jurisdiction, the National Council puts forward the interests of all the interest groups that are represented in the National Council.

In this way, the National Council and its working bodies often contribute to the improvement of legislative solutions without causing unnecessary complications and confrontations between members of both houses. Those who doubt in usefulness of the National Council do not know how the activity of commissions of the National Council is branched and comprehensive. In its 25 years of existence, the National Council has adopted and conveyed to the National Assembly more than 500 opinions. On the other hand, its commissions have in the same time sent to the working bodies of the National Assembly more than 2800 opinions. Most were formed accompanying adoption of laws about the organization of

123 Gl. odločbo US, št. U-I-84/96, z dne 21. 10. 1999, obj. v Uradnem listu RS, št. 95/99.

119 Grad, E.: Parlament in vlada, ČZ Official Gazette RS, Ljubljana, 2002, p. 266.

nujnega postopka¹²⁴) in skrajšanega zakonodajnega postopka ni določal minimalnega roka, v katerem je lahko Državni svet podal svoje mnenje o obravnavani zadevi. Zaradi te pravne praznine je bil prejšnji Poslovnik Državnega zbora v neskladju z Ustavo, saj Državnemu svetu ni zagotavljal učinkovitega uresničevanja njegove ustavne pristojnosti. V primeru izredne seje, hitrega ali skrajšanega postopka je lahko prišlo do tega, da se je poljubno skrajšal rok med pošiljanjem sklica seje predsedniku Državnega sveta in odločitvijo Državnega zbora. Pred iztekom tega roka Državni zbor ne bi smel sprejeti dokončne odločitve o obravnavani zadevi.

Državni zbor je v veljavnem Poslovniku uredil roke za podajanje mnenja v primeru izredne seje ter nujnega in skrajšanega zakonodajnega postopka. Poslovnik Državnega zbora določa, da rok, v katerem lahko Državni svet poda mnenje o zadevah z izredne seje Državnega zbora, določi Kolegij predsednika Državnega zbora.¹²⁵ Ta rok, ki ne sme biti krajši od štiriindvajsetih ur, se določi glede na nujnost zadeve oziroma potrebe države.¹²⁶ Rok mora biti razumen, vendar se njegova dolžina lahko določa glede na nujnost obravnavanja zadeve zaradi potreb države. Pred potekom roka za predložitev mnenja Državnega sveta Državni zbor ne more odločati o zadevah, razen če Državni svet pošlje obvestilo, da k predlogu zadeve ne bo podal mnenja.

Državni zbor je tako upošteval odločbo Ustavnega sodišča in s Poslovnikom pooblastil Kolegij predsednika

124 Prejšnji Poslovnik Državnega zbora je urejal hitri postopek za sprejem zakona, novi poslovnik pa je izraz hitri postopek zamenjal z izrazom nujni postopek, kar je tudi pravilnejši izraz. Izraz nujni postopek bolj poudarja izredno situacijo, ki neodložljivo zahteva zakonodajno urejanje. Pri uporabi tega postopka morajo biti namreč v ospredju razlogi, ne pa čas oziroma njegova hitrost. Podrobneje o tem gl. Igličar, A.: Novi poslovniški model zakonodajnega postopka, *Pravna praksa*, št. 42/2002, Ljubljana, 2002, str. VI.

125 Gl. Poslovnik Državnega zbora, o.c., 21. člen.

126 Prav tam, 215. člen.

the state, the economy, local self-government, and social activities.¹²⁰

The National Council and its working bodies contribute to the legislative procedure with opinions. The drafts of laws in the National Council are first examined by its commissions, which submit opinions to the National Council, or they send the opinion that they previously adopted directly to the responsible working body of the National Assembly. The working bodies of the National Council could, in accordance with the previous Rules of Procedure of the National Assembly,¹²¹ prepare the opinion only when the responsible working body of the National Assembly could deliberate it in the first reading. In the first reading, a presentation of the draft law, and a discussion on the reasons required for the adoption of the law, as well as the principles and goals of the draft law, are conducted. Because of that, the opinions of the working bodies of the National Council commonly included an opinion about the reasons for the draft law, its principles, and its goals.

Current Rules of Procedure of the National Assembly from the year 2002 have changed the nature and the concept of the first reading of the legislative procedure in a way that the first reading of the law is done by forwarding the draft law to the members of the National Assembly.¹²² Now, the working bodies of the National

120 The data is gathered from the annual reports and reports on activities of the National Council, available at: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. See also Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

121 Rules of Procedure of the National Assembly, Official Gazette RS, no. 40/1993, 80/1994, 28/1996, 26/1997, 46/2000, 3/2001, 9/2001 and 13/2001, which was in force until 15. 7. 2002.

122 121. article of the Rules of Procedure of the National Assembly, Official Gazette RS, no. 92/07 – UPB, 105/10 and 80/13.

Državnega zbora, da Državnemu svetu določi rok za oblikovanje mnenja. Kaj pa se zgodi, če kolegij ne določi omenjenega roka? Vsekakor drži, da v tem primeru zopet nastane protiustavna situacija, ki jo je v odločbi navedlo Ustavno sodišče, saj Državni svet ne razpolaga z rokom, v katerem bi lahko oblikoval svoje mnenje in do izteka katerega bi moral Državni zbor počakati z odločanjem. Državni svet v tem primeru ne more učinkovito uresničevati svoje ustavne pristojnosti dajanja mnenj.

13.6. Državni svet in državni proračun

Državni svet lahko predlaga zakon, ki ureja državni proračun. V nasprotju z nekaterimi drugimi domovi, ki nimajo pristojnosti predlaganja in nasprotovanja finančnim aktom, lahko Državni svet po enakem postopku, kot vse ostale zakone, obravnava vso finančno zakonodajo. To pomeni, da lahko predlaga davčne zakone, zakone o poroštvih in podobne finančne akte ter k njim podaja mnenja in z vetom izrazi nestrinjanje z njihovo vsebino. Iz tega sledi, da je na tem področju Državni svet močnejši od mnogih drugih domov v Evropi in svetu. Izjema, kot že navedeno, velja le za državni proračun. Državni svet nima pristojnosti predlagati in zadrževati državnega proračuna. Podobno velja tudi za nekatere druge domove evropskih parlamentov, ki nimajo pravice do udejstvovanja v postopku sprejemanja državnega proračuna (npr. avstrijski Zvezni svet¹²⁷, belgijski Senat¹²⁸, češki Senat¹²⁹).

Ustavno sodišče je v odločbi z dne 3. aprila 1997¹³⁰ odločilo, da je Poslovnik Državnega zbora v delu, kjer ureja postopek v zvezi z državnim proračunom, skladen

127 Povzeto po Ustavi Republike Avstrije, o.c., str. 95, čl. 42.

128 O tem gl. The Coordinated Constitution of Belgium of February 17, 1994, o.c., str. 15, čl. 74; The Belgian Federal Parliament, o.c., str. 21.

129 Gl. Constitution of the Czech Republic of 16 December 1992, o.c., str. 127, čl. 42.

130 Odl. št. U-I-40/96.

Assembly have no part in the first reading. Hence, it would be meaningless if the working bodies of the National Council would submit their opinions on the draft laws in this early stage. The opinion could be sent to the National Assembly in the first reading only by the National Council, although it is in practice common that in the first reading opinions are also submitted by National Assembly's commissions. The working bodies of the National Council prepare opinions on the draft laws mainly for the second reading, which is initially carried out in the working bodies of the National Assembly. The reading is not general, as the responsible working body deliberates and votes only about particular articles of the law. Consequently, it is appropriate for working bodies of the National Council to form their opinions with concrete suggestions and observations.

In practice, members of the responsible working body wish to receive amendments from the National Council and its working bodies, because a general opinion is more impractical in the second reading, when they deliberate on articles of the bill and their amendments. However, concrete proposals of changes and of the complementation of the proposed articles are most helpful to responsible working bodies. Such conduct is present in practice even if there is no provision in the Constitution that would allow the National Council to adopt the amendments to the deliberated acts. The National Assembly in spite of such practice still has not changed its Acts of Procedure, which would establish the power of the National Council and its working bodies to propose amendments in the second reading. Because the National Council is not the entitled proposer of the amendments in the second reading of the legislative procedure, the National Assembly or its working bodies are not obliged to deliberate the proposed amendments that are put forward in the opinion by the National Council or its

z Ustavo. Gre namreč za avtonomno odločitev Državnega zbora, ali proračun sprejme v obliki zakona ali ne. Ustava ne določa, da bi moral Državni zbor proračun sprejeti v obliki zakona, kot to velja denimo v nemški ureditvi. Potem ko se je Državni zbor odločil, da proračun ne bo zakon, ampak poseben akt, je določil tudi poseben postopek obravnave, ki se razlikuje od običajnega zakonodajnega postopka (le dve fazi postopka, posebnosti glede amandmiranja ipd).

Državni svet torej ne more vložiti veta na proračun, ima pa možnost, da predloži Državnemu zboru ali njegovim delovnim telesom mnenje o vseh zadevah iz njegove pristojnosti, torej tudi mnenje o državnem proračunu.

Ker Državni svet nima pristojnosti, da vloži veto na državni proračun, ga namesto na državni proračun vloži na spremljajoč zakon o izvrševanju proračuna, kar ima podobne posledice kot vložitev veta na proračun¹³¹, ker je ta zakon nujen za njegovo izvajanje. Z njim se namreč državni proračun umesti v slovenski pravni sistem. Glavni razlog za to, da Državni svet vloži veto na ta zakon, torej ni v vsebini tega zakona, ampak v vsebini državnega proračuna. Poleg tega sta tako državni proračun, kot poseben finančni akt, kot tudi Zakon o izvrševanju proračuna, medsebojno povezana, zato ne pride do uveljavitve državnega proračuna, če Državni svet vloži veto na Zakon o izvrševanju proračuna. Začetek veljavnosti je z vloženim vetom odložen tudi za državni proračun, saj morata tako proračun kot tudi zakon o njegovem izvrševanju začeti veljati istočasno.

Ker Vlada, kot edini možni predlagatelj državnega proračuna, pogosto zamudi z vložitvijo državnega proračuna v Državni zbor in če se razprava in odločanje o državnem proračunu premakne na izredno sejo v drugi

commissions. Nonetheless, it can still deliberate on them and adopt them if they are proposed by the responsible working body of the National Assembly or any other entitled proposer (for example an MP, a parliamentary group), and if they have passed the vote on the sitting of the working body. In this case, they become a part of the supplemented legislation proposal that is a part of the report of the working body of the National Assembly.

Offering opinions is a jurisdiction of the National Council with which it points out on the interests that were especially pointed out in the deliberation of a particular act. With that it exercises its advisory function, vested by the Constitution to a representative body of the legislative authority. Contrary to the suspensory veto, the effectiveness of the conveyed opinions cannot be statistically assessed, because their effect in the legislative procedure of the National Assembly is shown in many different ways. In spite of that, it is known that in general the opinions stressing the interests of the members of the National Council are being transformed into legislative propositions, especially if the proposed solutions of the National Council are adopted by the responsible bodies of the National Assembly.

The acts of cooperation in the legislative procedure of the National Council and its commissions are not based only on the viewpoints of the members of the National Council, but also on viewpoints of many representatives of the civil society that are present on the sittings of its working bodies or of representatives that gather on its consultations.

13.5.1. Opinions in emergency and shortened procedures

Within the regular legislative procedure, the National Council has enough time available to submit an opinion

¹³¹ Več o tem gl. Štrus, Dušan, 2002: Odločilni veto Državnega sveta Republike Slovenije, o.c., str. 297–298.

polovici meseca decembra, ima veto Državnega sveta za posledico to, da se mora Državni zbor ponovno sestati v času pred novim letom, da preglasi veto Državnega sveta, če želi začetek uveljavitve državnega proračuna pred začetkom naslednjega fiskalnega leta.

13.7. Zahteva za uvedbo parlamentarne preiskave

Državni svet ima podobno kot številni drugi domov v Evropi pristojnost uvesti parlamentarno preiskavo o zadevah javnega pomena. Redkejši so tisti drugi domovi, ki te pristojnosti nimajo (avstrijski Zvezni svet, češki in poljski Senat). Vsekakor gre v tem primeru za šibkejše druge domove, ki nimajo močnejšega nadzora nad delom izvršilne veje oblasti. V primerjavi z ostalimi drugimi domovi, ki imajo to pristojnost, je Državni svet posebej šibek, saj ne glede na to, da lahko zahteva od Državnega zbora uvedbo parlamentarne preiskave, slednje ne more oblikovati.

Državni svet lahko določi predmet preiskave o zadevah javnega pomena, ne more pa odločati o sestavi preiskovalne komisije, je oblikovati, izvajati dokazov in sprejeti končnega poročila. Vse to je v pristojnosti Državnega zbora. Vendar pa Državni zbor na drugi strani nima sredstev, s katerimi bi lahko zavrnil preiskavo o zadevah javnega pomena, ki jo je zahteval Državni svet.

Slovenska ureditev je torej unikatna, saj v svetu ne obstaja primerljiva ureditev, v skladu s katero bi drugi dom lahko zahteval od prvega, da oblikuje preiskovalno komisijo. Drugi domovi lahko sami uvedejo preiskovalno komisijo, če imajo takšno pristojnost, ali pa je ne morejo, če te pristojnosti nimajo. Državni svet pa je nekje vmes - lahko jo zahteva, nima pa nobene vloge pri njenem oblikovanju. Glede na to, da Državni svet ne more sam izvesti parlamentarne preiskave, ne gre za močno pristojnost, saj je izvedba le-te odvisna od Državnega zbora, predvsem

on any matter. On the other hand, in the course of emergency and shortened procedures, when the legislative procedure is streamlined, it is necessary to set a deadline for the National Council to submit its opinion, otherwise it would be deprived of its possibility to implement these constitutional powers. The powers of the National Council to submit opinions have been dealt with in a decision,¹²³ by the Constitutional Court. It has found out that the former Rules of Procedure of the National Assembly failed to define a minimal deadline within which the National Council was to supply its opinion on matters under consideration in the case of an extraordinary session or a fast-track (now urgent) procedure.¹²⁴ Therefore, the former Rules of Procedure were violating the Constitution on account of this legal loophole, not least because they failed to secure the National Council's effective implementation of its constitutional powers. This is especially true in the case of extraordinary sessions, fast-track or streamlined procedures as the deadline could have been arbitrarily shortened in the course of sending the president of the National Council a call for a session, and the decision taken by the National Assembly. Before this deadline was over the National Assembly should not have taken the final decision on the matter in question.

The National Assembly has, however, in the meantime amended its Rules of Procedure to address the deadline by which opinions have to be submitted in the case of extraordinary sessions and urgent and streamlined

123 Ruling of the C. C. U-I-84/96, from 21. 10. 1999, publ. in Official Gazette RS, no. 95/99.

124 Former Rules of Procedure of the National Assembly has regulated a fast legislative procedure, the new Rules of Procedure has replaced the term fast legislative procedure with the term emergency procedure, which is more accurate. The term emergency procedure stresses the extraordinary situation, that demands legislative regulation without delay. When using this procedure not the time, but the reasons must be in the foreground. In detail: Igličar, A.: Novi poslovniški model zakonodajnega postopka, Pravna praksa, no. 42/2002, Ljubljana, 2002, p. VI.

od opozicije v njem, ki ima interes opravljati nadzor nad delom izvršilne oblasti.

Državni svet te pristojnosti ne uporablja pogosto, saj jo je od začetka delovanja uporabil le petkrat in to dvakrat v prvem in po enkrat v drugem, tretjem in četrtem mandatu. V petem mandatu je le razširil parlamentarno preiskavo, ki jo je zahteval v prejšnjem mandatu in sicer za parlamentarno preiskavo o ugotavljanju zlorab v slovenskem bančnem sistemu.¹³² V povprečju je torej Državni svet uporabil to pristojnost enkrat na mandat. Nizko število zahtev Državnega sveta za parlamentarno preiskavo je razumljivo, saj bi s prevelikim številom zahtev lahko prekomerno obremenili delo Državnega zbora, kar bi bolj škodovalo kot koristilo, saj Državni zbor večjega števila sočasnih preiskovalnih komisij, ob siceršnjem delu v delovnih telesih in na plenarnih zasedanjih, ne bi zmo gel kakovostno opravljati.

13.8. Nekdanja zahteva za razpis referendum

Do leta 2013 je imel sicer šibek Državni svet tudi zelo močno pristojnost, da je lahko zahteval razpis zakonodajnega referendum. Tudi v tem primeru je slovenska ureditev predstavljala posebnost, ker je lahko šibkejši drugi dom od močnejšega, prvega doma zahteval, da razpiše referendum, ki je ena najbolj demokratičnih oblik odločanja in predstavlja izvedbo neposredne demokracije v državi. To pristojnost Državnega sveta je Ustava urejala v četrti alineji prvega odstavka 97. člena Ustave. Poslovnik Državnega sveta je na podlagi te ustavne določbe urejal,

.....
132 Podatki izhajajo iz letnih poročil in poročil o delu Državnega sveta, ki so dostopni na URL: <http://www.ds-rs.si/?q=publikacije/porocila-o-delu-drzavnega-sveta>. Glej tudi Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.

legislative procedure. The Rules of Procedure stipulate that the Cabinet of the President of the National Assembly decides on the deadlines by which the National Council may provide its opinion in relation to the matters arising from the extraordinary sessions of the National Assembly.¹²⁵ This deadline should be reasonable, but not shorter than twenty-four hours; the deadline is set according to the emergency of the matter and should reflect the needs of the state.¹²⁶ As long as this deadline still runs, the National Assembly may not decide on these matters, unless the National Council informs it that it shall not provide any opinion to draft legislation.

The National Assembly has paid regard to the decision of the Constitutional Court and has authorized with its Rules of Procedure the Cabinet of the president of the National Assembly to decide on the deadlines by which the National Council should convey an opinion. But what happens, if the Cabinet doesn't appoint the deadline? In any case it again comes to the unconstitutional situation that was pointed out by Constitutional Court in its decision, because the National Council again doesn't have any deadline in which it should give its opinion and until the National Assembly should hold all the decisions regarding the matter in question. In that case the National Council cannot effectively exercise its constitutional power of giving opinions to the National Assembly.

13.6. National Council and the state budget

The National Council can propose an act that regulates state budget. It can, to the contrary of some of the other upper chambers, which lack the jurisdiction of proposing and opposing fiscal legislation, deliberate it just as all the

.....
125 Rules of procedure of the National Assembly, o.c., Art. 21.

126 Rules of procedure of the National Assembly, o.c., Art. 215.



da lahko vloži pobudo za razpis referendumu vsak član Državnega sveta.

Vpliv Državnega sveta na zakonodajno odločanje z zahtevo o uvedbi zakonodajnega referendumu je bil sicer zelo posreden, v praksi pa je utegnil imeti zelo pomemben vpliv, saj je lahko pomenil močen pritisk in grožnjo Državnemu zboru, če ne bi dovolj upošteval stališč Državnega sveta. Zato je ustavodajalec sprejem take odločitve v Državnem svetu otežil, saj je bila za izglasovanje zakonodajnega referendumu potrebna absolutna večina.¹³³ Nedvomno je šlo za najmočnejšo pristojnost Državnega sveta, ki pa je dejansko niti ni mogel izrabljati, saj bi se ob pretirani uporabi sprevrgla v svoje nasprotje. Državni svet je to pomembno pristojnost uporabil dvakrat, in sicer jeseni 1997 v zvezi z odločanjem o volilnem sistemu in leta 2007, ko je zahteval razpis zakonodajnega referendumu o noveli Zakona o lastninskem preoblikovanju zavarovalnic. Odločitev za referendum je bila v Državnem svetu sprejeta, ker v razpravah v zakonodajnem postopku vladna koalicija ni pokazala pravega posluha za to, da bi bila razdelitev premoženja zavarovalnic bolj pravična in bi bili pri njej soudeleženi tudi njeni nekdanji zavarovanci. Novela zakona je to premoženje zavarovancev odvzela in ga prenesla na Kapitalsko družbo, ki bi lahko z njim prosto razpolagala. Državni svet je bil z zahtevo za razpis referendumu uspešen, saj zakon na referendumu ni bil potrjen, ker mu je velika večina volivcev nasprotovala in s tem izglasovali nezaupnico Vladi in vladni večini v Državnem zboru, ki je novelo zakona podprla.

Ob tem je treba poudariti, da je bilo nekaj primerov, ko je Državni svet odločal o pobudi za zahtevo za razpis referendumu, vendar je ni izglasoval (npr. na Zakon o

other acts. That means that it can propose acts regarding taxation, state guarantees and similar fiscal acts, and give opinions on them or show disapproval with the content of that legislation by filing a veto on it. It is similar to some other upper chambers of European parliaments that do not have the power to participate in the procedure of the state budget (for example Austrian Federal Council¹²⁷, Belgian Senate¹²⁸, Czech Senate¹²⁹).

The Constitutional Court has decided in a decision from April 3rd 1997,¹³⁰ that the part of the Rules of Procedure of the National Assembly that contains provisions about the state budget is in accordance with the Constitution. It is an autonomous decision of the National Assembly whether it passes the state budget in the form of a law or not. The Constitution does not provide an answer to the question regarding the form in which the budget should be enacted, as it is distinctive of, for example, the German regulation. After the National Assembly had decided that the budget will not be a law, but a special act, it has also established a special procedure that is to be distinguished from the ordinary legislative procedure (only two phases of the procedure, specialities about the amending of the act etc.).

The National Council cannot file a veto on the state budget, however, it can submit an opinion about all matters from the jurisdiction of the National Assembly to its working bodies or the National Assembly itself, and consequently it can also give an opinion regarding the state budget.

Due to the absence of the jurisdiction of the National Council to file a veto on the state budget, it instead files

133 Grad, Franc; Kaučič, Igor; Ribičič, Ciril et al.: Državna ureditev Slovenije, o.c., str. 130, 131.

127 Summarized after Constitution of the Republic of Austria, o.c., p. 95, ar. 42.

128 O tem gl. The Coordinated Constitution of Belgium of February 17, 1994, o.c., p. 15, ar. 74; The Belgian Federal Parliament, o.c., p. 21.

129 Constitution of the Czech Republic of 16 December 1992, o.c., p. 127, ar. 42.

130 Odl. št. U-I-40/96.

malem delu, pokojninsko reformo¹³⁴, udeležbo delavcev pri dobičku, zemljiško knjigo), kar kaže na veliko preudarnost Državnega sveta ob obravnavi in odločanju o uporabi te pristojnosti.

Da je zahteva za razpis referendumu močno sredstvo, je poudarilo tudi Ustavno sodišče.¹³⁵ Zapisalo je namreč, da če Državni svet najprej uporabi suspenzivni veto kot milejše sredstvo in z njim ne uspe, potem mora imeti na voljo tudi možnost vložitve zahteve za razpis referendumu kot močnejše sredstvo za nasprotovanje odločitvi Državnega zbora v primeru nestrinjanja s sprejetim zakonom. S to pristojnostjo se Državni svet vključi v postopek sprejemanja zakona, saj do odločitve na referendumu ni jasno, ali bo zakon poslan v podpis Predsedniku republike ali ne.

Kot je bilo že omenjeno, je bila zahteva Državnega sveta za razpis referendumu z ustavno spremembo leta 2013 ukinjena,¹³⁶ z obrazložitvijo, da lahko referendum zahtevajo samo volivci s svojimi podpisi in ne več tretjina poslancev in Državni svet. Pri prejšnjih predlogih za ukinitve te pristojnosti je bilo črtanje teh dveh predlagateljev obrazloženo z argumentom, da ta dva subjekta že sodelujeta v zakonodajnem postopku in ne potrebuje posebnih pristojnosti zahtevati razpis zakonodajnega referendumu. Na ta način se je dejansko omejilo možnost uporabe referendumu za reševanje nasprotij med Državnim zborom in Državnim svetom, saj za razreševanje teh nasprotij pravni red daje druga sredstva.

134 Zahtevo za presojo ustavnosti je nato vložila skupina poslancev, ker postopek s pobudo za zahtevo za razpis referendumu ni uspel v Državnem svetu.

135 Odločba Ustavnega sodišča, št. U-I-104/01-17 z dne 14. 6. 2001, Uradni list RS, št. 52/01.

136 S spremembo 90. člena Ustave, ki je določila, da lahko razpis referendumu zahteva samo 40 000 volivcev, je bila ukinjena možnost, da bi takšno zahtevo vložil Državni svet (ali tretjina poslancev). Sprememba je bila objavljena v Uradnem listu Republike Slovenije, št. 47/13 z dne 31. 5. 2013.

it on an Implementation of the state Budget Act, which has similar consequences as filing a veto on the budget directly,¹³¹ because such an act is obligatory for its implementation. With it, the budget is being implemented in the Slovenian legal order. The main reason filing a veto on that act is not in the content of that act, but in the content of the state budget. Besides that, the state budget as a special fiscal act is closely linked to the Implementation of the State Budget Act, because of which the state budget cannot be introduced if the National Council files a veto on the Implementation of the State Budget Act. If the veto is filed, the introduction of the state budget is also delayed, as the budget and the Implementation of the State Budget Act must be introduced at the same time.

Since the Government, the sole proposer of the state budget, is often late with filing the proposal of the budget in the National Assembly, and in the case that the discussion and deliberation in its regard move to the extraordinary session in the second half of December, the veto of the National Council causes the need of another session of the National Assembly in time just before the New Year, so that it can override the veto of the National Council, especially if it wants to put the introduction of the state budget before the start of the next fiscal year.

13.7. Request for the start of the parliamentary inquiry

The National Council has similarly to the numerous upper chambers in Europe the jurisdiction to require the start of the parliamentary inquiry about the matters of public importance. Fewer are the chambers that do not have such power (Austrian Federal Council, Czech and

131 More on that: Štrus, D.: Odločilni veto Državnega sveta Republike Slovenije, o.c., p. 297-298.

Državni svet je v mnenju¹³⁷ ugovarjal tej rešitvi predvsem zato in toliko, kolikor je pomenila pretirano omejevanje vpliva volivcev in ne samo zaradi odprave možnosti, da sam zahteva razpis referendum. Glede slednjega je opozoril, da je Državni svet izredno preudarno in redko posegel po zahtevi za razpis referendum, in sicer dvakrat v dvajsetih letih.

Vendar je končno treba poudariti, da Državni svet te pristojnosti ni zlorabljal in je v praksi predstavljala „skrito orožje“, ki bi ga lahko uporabil. Vpliv Državnega sveta na zakonodajno odločanje z zahtevo o uvedbi zakonodajnega referendum je bil sicer zelo posreden, v praksi pa je utegnil imeti celo večjo težo kot suspenzivni veto, saj je lahko pomenil močen pritisk na Državni zbor, če ta ne bi dovolj upošteval stališč Državnega sveta.¹³⁸

Sprejeta sprememba Ustave je bistveno oslabilo ustavni položaj Državnega sveta, zato se zastavlja vprašanje, ali je mogoče okrepiti vlogo Državnega sveta na način, ki ne bi povzročal blokad, temveč bi zagotavljal izboljševanje kakovosti zakonov, sprejetih v rednem zakonodajnem postopku.

13.9. Pristojnosti Državnega sveta v ustavno-revizijem postopku

Redko imajo dvodomni parlamentarni sistemi ureditev, pri kateri drugi dom ne bi mogel učinkovito vplivati na potek ustavno-revizijskega postopka, ki predstavlja najpomembnejši postopek v parlamentu. Ustavno-revizijski postopek namreč pomeni spremembo temeljnega akta v državi. Drugi domovi, ki ne morejo vplivati na spremembo ustave, so zelo šibki in ne predstavljajo posebne nevarnosti za blokado ustavnih sprememb. Takšen je

¹³⁷ Mnenje z dne 20. 3. 2013.

¹³⁸ Grad, F.: Parlament in vlada, ČZ Uradni list RS, Ljubljana, 2000, str. 263.

Polish Senate). In this case we can say that those upper chambers have weaker jurisdictions, as they do not have a wide supervision over the executive branch of authority. In comparison to other upper chambers which have that power, the National Council is especially weak, since although it can request from the National Assembly the start of the parliamentary inquiry, it can not form it by itself.

The National Council can determine the subject of the inquiry of matters of public importance, but cannot decide on the composition of the commission of inquiry, set it up, present evidence or pass the final report. All this is in the power of the National Assembly. On the other hand, the National Assembly does not have a measure with which it could decline the inquiry that was requested by the National Council.

Slovenian regulation is unique, as there is no comparable regulation in the world which could enable the upper chamber to request the set up of the commission of inquiry from the lower chamber. The upper chambers can, if they have such a power, set up the commission of inquiry by themselves, but cannot do so if power of parliamentary inquiry is not granted to them. The National Council is somewhat ambiguous, as it can request it, but can take no part in the process of setting up the commission of inquiry. Due to the fact that the National Council cannot carry out parliamentary inquiry on its own we cannot say that this is a strong jurisdiction, as its execution is entirely dependant of the National Assembly, especially the opposition, with a strong interest in the supervision of work conducted by the executive authority.

The National Council uses this power rarely; in its 25 years of functioning, it was executed on only five occasions, twice in National Council's first mandate and once in the second, third and fourth mandate. In the fifth mandate it has only extended the inquiry concerning the misuse of

primer slovenskega Državnega sveta, saj ne more predlagati ustavnih sprememb in ne more vložiti veta na ustavni zakon niti takrat, ko bi se sprememba Ustave nanašala na področja, ki so zastopana v Državnem svetu.

Kljub temu pa Državni svet ni povsem brez pristojnosti na področju ustavno-revizijskega postopka, saj lahko v skladu s 97. členom Ustave poda mnenje o vseh zadevah iz pristojnosti Državnega zbora, torej tudi o spremembah Ustave. Državni svet torej oblikuje in pošlje Državnemu zboru mnenje o predlaganih ustavnih spremembah, vendar v okviru te pristojnosti ne more bistveno vplivati na spremembo Ustave, saj je končna odločitev v rokah Državnega zbora.¹³⁹

Mnenje teorije¹⁴⁰ je, da bi bilo v postopek spreminjanja Ustave smiselno vključiti tudi Državni svet, saj udeležba drugega doma v ustavodajnem oziroma ustavno-revizijem procesu omogoča vstop večjemu številu interesov v postopek odločanja. Če bi Državni svet razpolagal s pristojnostjo soodločanja pri spreminjanju Ustave, bi to pomenilo dodatno varovalo pri sprejemanju temeljnih ustavnih določil. Slovenski Državni svet bi v takšnem primeru lahko igral vlogo varuha Ustave, vendar je edina institucija, ki odloča o vsebini Ustave, Državni zbor.¹⁴¹

Državni svet redno obravnava predloge za spremembo Ustave in je tudi na tem področju zelo aktiven, pri čemer je vredno izpostaviti zadnjo spremembo Ustave iz leta 2016, s katero je bila v Ustavo zapisana pravica do pitne

power in the Slovenian banking system,¹³² which was started in its prior mandate. On average, the National Council uses this jurisdiction once per mandate. A small number of requests is understandable, as otherwise the National Assembly would be encumbered excessively, resulting in more negative than positive, because the National Assembly could not manage qualitatively finish a larger number of simultaneous commissions of inquiry in addition to its regular work in the working bodies and on plenary sittings.

13.8. Former request for the call of a referendum

Until 2013, the otherwise weak National Council had very strong jurisdiction to request the call of a legislative referendum. Slovenian regulation was in this part also an anomaly, as the weaker upper chamber could request from the stronger upper chamber a call for a referendum, which is one of the most democratic ways of decision-making and represents the manifestation of direct democracy in the state. The Constitution has granted it this jurisdiction in the fourth indent of the first paragraph of Article 97. The Rules of Procedure of the National Council stipulated, based on Article 97 of the Constitution, that every member of the National Council can file a motion to call for a referendum.

National Council's influence on legislative decision-making through their demands for legislative referendum was actually very indirect, although in practice this could have even greater weight than a suspensory veto, as it

139 Tako tudi Ribičič, Ciril: Dvodomnost, o.c., str. 132.

140 Tako Ribičič, Ciril: Spremeniti način spreminjanja ustave?, Pravna praksa, št. 7/2002, Ljubljana, 2002, str. 9.

141 Pred ukinitvijo v letu 2001, je tudi na Hrvaškem obstajala dvodomna ureditev, v okviru katere drugi dom, Županijski dom, ni imel možnosti vpliva na spreminjanje Ustave. Lahko pa je, podobno kot Državni svet, dajal mnenja iz pristojnosti prvega doma. O spremembi Ustave je z dvotretjinsko večino odločil Zastopniški dom, po pridobitvi predhodnega mnenja Županijskega doma.

132 The data is gathered from annual reports and reports on activities of the National Council, available at: <http://www.ds-rs.si/?q=publikacije/poročila-o-delu-drzavnega-sveta>. See also Poročilo o delu Državnega sveta Republike Slovenije ob zaključku prvega mandata od 23. 12. 1992 do 16. 7. 1997, Državni svet RS, Ljubljana, 1997; Poročilo o delu Državnega sveta Republike Slovenije v drugem mandatu od 17. 12. 1997 do 31. 10. 2002, Državni svet RS, Štembal, M. (ur.), Štrus, D. (ur.), Ljubljana, 2002.



vode.¹⁴² Pobudo za ustavno spremembo na tem področju je Vladi in Državnemu zboru, kot kvalificiranima predlagateljema sprememb Ustave, podal Državni svet že leta 2013. Pobuda je nastala kot odziv na predlog Direktive Evropskega parlamenta in Sveta EU o podeljevanju koncesijskih pogodb. Namen oz. cilj pobude Državnega sveta je bil, da se zagotovi univerzalen dostop do vode, zavarujejo vodni viri za prihodnje generacije in da se prepreči izvajanje oskrbe s pitno vodo v okviru pridobitne dejavnosti gospodarskih družb in korporacij, katerih edini cilj je pridobivanje dobička. Na podlagi pobude Državnega sveta, je skupina poslank in poslancev Državnega zbora leta 2014 v proceduro vložila predlog za začetek postopka za spremembo Ustave Republike Slovenije z osnutkom ustavnega zakona, ki ga je dve leti kasneje Državni zbor sprejel.

13.10. Pristojnosti Državnega sveta pri obravnavi zadev Evropske unije

Pomembno vlogo na področju evropskih zadev ima tudi slovenski parlament, ki je svojo ureditev in delovanje prilagodil razmeram v Evropski uniji s sprejemom četrtega odstavka 3.a člena Ustave. Ta določa, da v postopkih sprejemanja pravnih aktov in odločitev v mednarodnih organizacijah, na katere Slovenija prenese izvrševanje dela suverenih pravic, Vlada sproti obvešča Državni zbor o predlogih takih aktov in odločitev ter o svojih dejavnostih. Državni zbor lahko o tem sprejema stališča, Vlada pa jih upošteva pri svojem delovanju. Razmerja med Državnim zborom in Vlado podrobneje ureja zakon, ki ga je Državni zbor sprejel z dvotretjinsko večino. Državni

could function as a stern warning and place considerable pressure on the National Assembly if it fails to adequately take into account National Council's positions. That is why the Constitution made it harder to pass such a decision in the National Council, laying down the absolute majority as required to vote for the legislative referendum.¹³³ Without doubt, this was the strongest jurisdiction of the National Council, and could not actually be overused as it would as a result change into its opposite. The National Council had exercised this power twice, i.e. in September 1997 on the electoral system, and in 2007 as it requested a call for a legislative referendum concerning the Act on Ownership Restructuring of Insurance Companies. The decision on the referendum was passed in the National Council, because the coalition did not show a lot of concerns in the discussion in the legislation procedure over the fairness of the distribution of funds of the insurance companies, as the former insurant would not be included into the distribution. The amendment of the act would take insurant's funds, transferring them to a capital company, rendering them at its free disposal. National Council's request was successful and the act was not confirmed at the referendum, as it was opposed by a large majority of voters and clarified that they gave a vote of censure to the Government and to the coalition in the National Assembly that voted for the act.

It has to be stressed that in some cases when the National Council was deciding about a request for the call of a referendum, the motion has not passed the vote (for example Mini job act, pension reform¹³⁴, share in profits

¹⁴² Ustavni zakon o dopolnitvi III. poglavja Ustave Republike Slovenije, Uradni list RS, št. 75/16.

¹³³ Grad, F., Kaučič, I., Ribičič, C. et al.: Državna ureditev Slovenije, p. 130, 131.

¹³⁴ The request for the ruling on constitutionality was later filled by a group of members of the National Assembly, because the request for the call of a referendum hasn't been successful in the National Council.

zbor torej vpliva na odločitve v Svetu Evropske unije prek sodelovanja z Vlado in nadzora nad njenim delom.

V obravnavo zadev Evropske unije se je vključil tudi Državni svet, saj pristop Slovenije k Evropski uniji vpliva tudi na njegovo delo. To je bil eden izmed razlogov za prizadevanja Državnega sveta, da bi se njegova vloga na tem področju uredila že na ustavni oziroma zakonski ravni. Poslanci so zavrnil predloge Državnega sveta, čeprav se je ta zavzemal zgolj za pridobivanje dokumentov neposredno od Vlade in možnost neposrednega sodelovanja v delovnih telesih Državnega zbora, kar lahko Državni svet doseže že na podlagi obstoječe ustavne in zakonske ureditve. Ureditev, ki jo je predlagal Državni svet, je Državni zbor vključil v svoj Poslovnik (in ne v Ustavo ali zakon), ki za Državni svet ne prinaša veliko novega, razen tega, da je predstavnik Državnega sveta vabljen na seje odbora, pristojnega za zadeve Evropske unije, ne glede na to, ali Državni svet na odbor predhodno pošlje svoje mnenje ali ne. Državni svet namreč lahko že na podlagi Ustave daje mnenje o vseh zadevah iz pristojnosti Državnega zbora, kar vključuje tudi zadeve Evropske unije, na podlagi Zakona o Državnem svetu pa mu mora predsednik Državnega zbora pošiljati vsa gradiva v zvezi z zadevami, ki so na dnevnem redu sej Državnega zbora (torej tudi v zvezi z zadevami Evropske unije). Državni svet, ki lahko npr. sprejme odločilni veto na predloge zakonov, lahko na področju evropskih zadev le podaja mnenja. Torej je njegova vloga na tem področju obrobne pomena - podobno kot v ustavno-revizijskem postopku, v postopku sprejemanja državnega proračuna in pri imenovanjih v Državnem zboru.

Vloga Državnega sveta je tako urejena v Poslovniku Državnega zbora, ki bi ga bilo v delu, kjer ureja obravnavo zadev Evropske unije, treba šteti za podzakonski akt, glede na to, da je obravnava evropskih zadev urejena tako v četrtem odstavku 3.a člena Ustave kot tudi v zakonu.

of workers and Land Registry), showing prudence of the National Council concerning use of this jurisdiction.

The Constitutional Court has also emphasized that the request for the call of the referendum is a powerful instrument.¹³⁵ It has noted that if the National Council at first uses the suspensory veto as a more lenient instrument, it must have the option to request a call of a referendum as a stronger instrument of opposing National Assembly's decision in case of a disagreement with the passed act. With this jurisdiction, the National Council is included in the legislative procedure, as it stays unclear whether the act will be sent into promulgation to the president or not until the decision of the referendum is final.

As before-mentioned, the request of the National Council for the call of a referendum was abolished in 2013 with the amendment of the Constitution¹³⁶ with reasoning that the referendum can only be requested by voters with their signatures, and not by one third of National Assembly's members or by the National Council. Former propositions of the abolition of this jurisdiction have explained that these two subjects already participate in the legislative procedure and therefore do not need a special power of requesting the call for a legislative referendum. In this way, the possibility of solving discrepancies of views between the National Assembly and the National Council through the use of a referendum became fairly limited, since the legal order provides different instrument for solving such conflicts.

135 Decision of the Constitutional Court, n. U-I-104/01-17 from 14. 6. 2001, Official Gazette RS, no. 52/01.

136 With the revision of the article 90. of the Constitution, that established a call for a referendum as an exclusive power of 40.000 voters, the National Council's option (and of a third of the members of the National Assembly) to do just that was abolished. The novelty was announced in the Official Gazette RS n. 47/13 from 31. 5. 2013.

Poslovnik Državnega zbora ima deloma sicer hierarhični položaj zakona¹⁴³, vendar to za podpoglavje, ki ureja področje zadev Evropske unije, verjetno ne velja.¹⁴⁴ Za Državni svet, ki je ustavni organ in ga Ustava v IV. poglavju ureja takoj za Državnim zborom, pa ureditev njegove vloge v notranjem aktu Državnega zbora ni primerna.

Ne samo, da način ustavne ureditve vloge Državnega sveta na področju zadev Evropske unije ni primeren, ampak tudi vsebina ureditve njegove vloge na tem področju ne zadošča. Državni svet je namreč izgubil možnost izvajanja pristojnosti na določenih področjih, ki so se prenesle na institucije Evropske unije. Vloga Državnega sveta v notranje-pravni ureditvi je šibkejša od vloge Državnega zbora, prav tako je šibkejša tudi na področju obravnave zadev Evropske unije. Državni svet lahko odloži sprejem predloga zakona v notranje-pravni ureditvi, vendar pa nima te možnosti na področju zadev Evropske unije, saj lahko poda le mnenje k predlogu akta Evropske unije. To pomeni, da je položaj Državnega sveta na področju obravnave zadev Evropske unije še šibkejši kot na zakonodajnem področju v notranje-pravni ureditvi. V primerjalnem pravu so ureditve praviloma drugačne, saj sta oba doma na področju zadev Evropske unije enakopravna oziroma ima drugi dom v primerjavi s prvim celo večjo vlogo, ker se lahko osredotoči na obravnavo določenih, za državo ključnih predlogov dokumentov Evropske unije.

¹⁴³ Ustavno sodišče je z odločbo št. U-I-40/96 (Ur. l. RS, št. 24/97) odločilo, da ima poslovnik v delu, ki ureja postopek sprejemanja aktov državnega zbora hierarhični položaj zakona, čeprav v formalnem smislu ni zakon. Več o tem gl. Štrus, D.: Odločilni veto Državnega sveta Republike Slovenije, o.c., str. 293–315.

¹⁴⁴ Pomembna razlika med ureditvijo zakonodajnega postopka in zadev Evropske unije v Poslovniku Državnega zbora je, da je postopek sprejemanja zakonov v poslovniku urejen neposredno na podlagi Ustave, zadeve Evropske unije pa na podlagi Ustave in zakona. Poslovniška ureditev v slednjem delu le izvaja in dopolnjuje ustavno in zakonsko ureditev (ni v nasprotju z njima).

The National Council has in its opinion¹³⁷ opposed this solution mainly because of the meaning behind an excessive limitation of the influence on the voters, and not only because of the abolishment of the power to request the call for a referendum. Regarding the latter, it has stressed that the National Council had used this jurisdiction very rarely and prudently – only twice in twenty years.

Finally, it should be emphasized that the National Council has not taken advantage of this jurisdiction and regarded it only as a secret weapon, available for use. The influence of the National Council and its request for the call for a legislative referendum on the legislative decision-making was very indirect; nevertheless, in practice, it had even stronger influence than the suspensory veto, as it meant more pressure on the National Assembly if the views of the National Council would not be considered sufficiently.¹³⁸

The passed changes of the Constitution have fundamentally weekend the constitutional position of the National Council. The question is, whether the role of the National Council can be strengthened in a way that would not cause blockages but only increase quality of legislation passed in the regular legislative procedure.

13.9. Jurisdictions of the National Council in the constitutional revision process

There are only few bicameral parliamentary systems in which the upper chamber does not have the power to effectively influence the constitutional revision process, which is considered to be the most important procedure in the parliament. Constitutional revision process means

¹³⁷ Opinion from 20. 3. 2013.

¹³⁸ Grad, F.: Parlament in vlada, ČZ Official Gazette RS, Ljubljana, 2000, p. 263.

Z vstopom Slovenije v Evropsko unijo se je del suverenosti prenesel na Evropsko unijo. Glede na to, da je Državni svet, tako kot tudi Državni zbor, v notranji ureditvi izgubil pristojnost delovanja na določenih področjih, ki so se prenesla v odločanje na institucije Evropske unije, bi bilo njegovo vlogo smiselno ustrezno določiti na področju zadev Evropske unije. Podobno kot lahko Državni svet odloži sprejem zakonov v notranje-pravni ureditvi, bi bilo ustrezno, če bi lahko odložil sprejem stališča Republike Slovenije, če bi imel pomisleke glede njegove vsebine. Gre za nekakšno uporabo suspenzivnega veta na področju zadev Evropske unije, na podlagi katerega bi Državni zbor oziroma njegovo delovno telo moralo ponovno obravnavati in pretehtati stališče ter dokončno odločiti o njem. Vendar pa lahko takšna pristojnost Državnega sveta povzroči dodatno zapletenost postopka sprejemanja stališča in tako upočasni odločanje na tem področju. To je problematično predvsem, ker je hitrost sprejema stališča za pravočasen in učinkovit nastop Vlade v institucijah Evropske unije ključna.

Vendar ima Državni svet kljub navedenemu vseeno možnost, da se učinkovito vključi v obravnavo zadev Evropske unije. Glede na to, da Državni zbor obravnava (oziroma naj bi obravnaval) vse aktualne evropske zadeve, ne more podrobneje obravnavati določenih zadev, ki so dolgoročno pomembne za Slovenijo, kar pa lahko stori Državni svet. S podrobno obravnavo posameznih pomembnih dokumentov lahko pripravi pomembne zaključke in jih v obliki mnenja predlaga v sprejem delovnemu telesu Državnega zbora. Podobna je tudi praksa nekaterih drugih domov v primerjalnem pravu, še posebej Doma lordov Velike Britanije, za katerega je značilno, da se je na področju zadev Evropske unije specializiral in uveljavil bolj kot prvi dom. V preteklosti je imel na tem področju širše pristojnosti od prvega doma, šele na prehodu tisočletja, ko je tako široke pristojnosti dobil tudi prvi dom, pa se je začel Dom lordov umikati podvajanju pri obravnavi

changing the fundamental act of the state. Upper chambers that cannot influence on the changes of the constitution are very weak and do not pose a danger for the stoppage of the constitutional changes. That is the case of the National Council, which cannot propose a constitutional amendment and cannot even file a veto on the constitutional act, when it effects the fields that are represented in the National Council.

Even though the National Council is not without powers in the constitutional revision process, as it can in accordance with 97. article of the Constitution give an opinion about all the matters from the jurisdiction of the National Assembly, which includes the amendments of the Constitution. The National Council forms and sends an opinion about the proposed constitutional amendments to the National Assembly, but cannot essentially influence on the amendment, because the final decision is in the hands of the National Assembly.¹³⁹

The view of the theory¹⁴⁰ is that it would be reasonable to include the National Council to the procedure of amending the constitution, because the participation of the upper chamber in the constituent process or in the constitutional revision process enables a larger number of interests to participate in the decision-making process. If the National Council would have the power of taking part in the decision-making on the amendments of the Constitution, that would mean another safeguard of fundamental constitutional provisions. Slovenian National Council could in that case play a role of the guardian of

139 Also Ribičič, C.: Dvodomnost, o.c., p. 132.

140 Ribičič, C.: Spremeniti način spreminjanja ustave?, Pravna praksa, no. 7/2002, Ljubljana, 2002, p. 9.

zadev Evropske unije. Zadeve, ki jih obravnava, je začel bolj selekcionirati, način dela pa je razporedil v šest pododborov, ki lahko posamezne zadeve zelo podrobno obravnavajo.

13.10.1. Pristojnost Državnega sveta na podlagi Lizbonske pogodbe

Državni svet ima šibke pristojnosti na področju obravnave zadev Evropske unije v slovenskem ustavnem redu, čeprav si je prizadeval za močnejše pristojnosti in bi bilo to mednarodnopravno primerljivo in celo smotno. Vendar pa imajo nacionalni parlamenti tudi pristojnosti, ki jih določa Lizbonska pogodba. Te pristojnosti niso močne, je pa zanimivo, kako jih Lizbonska pogodba določa. Glede na to, da je Lizbonska pogodba neposredno dodelila glasove obema domovoma v primeru, če je parlamentarno predstavniško telo dvodomno, je Državni svet pridobil enakopravno pristojnost z Državni zborom in to ne glede na siceršnjo šibkejšo ureditev v notranjem pravu. Takšna ureditev je za Državni svet zelo pomembna, še zlasti zato, ker je tekom petindvajsetih let obstoja izgubil številne pristojnosti.

Neposredno sodelovanje nacionalnih parlamentov v zadevah Evropske unije je zagotovljeno z Lizbonsko pogodbo¹⁴⁵ in dvema protokoloma, ki sta pogodbi priložena - Protokolom o vlogi nacionalnih parlamentov in Protokolom o uporabi načel subsidiarnosti in sorazmernosti. Protokol o vlogi nacionalnih parlamentov v Evropski uniji določa, da dokumente o posvetovanju Komisije (zelene in bele knjige ter sporočila) ob objavi Komisija pošlje neposredno nacionalnim parlamentom. Komisija pošlje nacionalnim parlamentom tudi letni zakonodajni program in vse druge instrumente zakonodajnega načrtovanja ali politične

¹⁴⁵ Gre za drugi pododstavek tretjega odstavka 5. člena in 12.b členom Pogodbe o Evropski uniji.

the Constitution, but the only institution that decides on Constitution's content remains the National Assembly.¹⁴¹

The National Council regularly deliberates on propositions for changing the Constitution and is also very active on this field, with which the last revision of the Constitution from 2016 should be mentioned, when the right to drinking water was written in the Constitution.¹⁴² The initiative for such a constitutional change was given to the Government and National Assembly by the National Council already in the year of 2013. The initiative was formed as a response to a proposition of the Directive of the European parliament and the Council about awarding concession contracts. The purpose and the objective of the National Council's initiative was to ensure a universal access to water, to secure the water sources for the next generations and to prevent supply with drinking water as an economic activity of companies and corporations, whose only object is profit. Basing on the National Council's initiative, a group of members of the National Assembly has filed a motion in 2014 for amending the Constitution of the Republic of Slovenia with a proposal of the constitutional act that was two years later passed by the National Assembly.

13.10. National Council's jurisdictions on the affairs of the European Union

The Slovenian parliament has an important role in the field of European affairs and has adapted its regulation

¹⁴¹ Before the abolition in 2001, Croatia had a bicameral system, in which the upper chamber (Zupanijski dom) didn't have the power to influence on the revision of the Constitution. It could, on the other hand, similarly to the National Assembly, give opinions on all matters from the jurisdiction of the lower chamber. On the revision of the Constitution the final decision was made with a qualified majority by Zastopniški dom after priorly gaining the opinion from Zupanijski dom.

¹⁴² Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia, Official Gazette RS, no. 75/16.

strategije, istočasno kot jih pošlje Evropskemu parlamentu in Svetu.

V Protokolu o uporabi načel subsidiarnosti in sorazmernosti je bila nacionalnim parlamentom prvič priznana možnost „zgodnjega opozarjanja“, da lahko dosežejo pregled zakonodajnega predloga ob upoštevanju načela subsidiarnosti. Vsak nacionalni parlament oziroma dom parlamenta lahko v osmih tednih po posredovanju zakonodajnega predloga predsednikom Evropskega parlamenta, Sveta in Komisije poda obrazloženo mnenje, v katerem navede razloge, zaradi katerih meni, da predlog ni v skladu z načelom subsidiarnosti. Če obrazloženo mnenje predstavlja najmanj tretjino glasov (četrtnina glasov, če gre za osnutek zakonodajnega akta, ki obravnava območje svobode, varnosti in pravice), dodeljenih nacionalnim parlamentom, mora institucija, ki je podala predlog, svoj predlog ponovno proučiti in se nato odločiti, ali ga bo ohranila, spremenila ali umaknila. Ta postopek se imenuje postopek z „rumenim kartonom“¹⁴⁶.

Nacionalni parlamenti oziroma njihovi domovi imajo dodeljene glasove, in sicer vsak nacionalni parlament po dva glasova. V primeru, da je sistem dvodomen, pa vsakemu domu pripada po en glas. Ta določba pomeni, da tudi Državnemu svetu kot drugemu domu slovenskega parlamenta pripada en glas.

V navedenem protokolu k Lizbonski pogodbi je bil t. i. »rumeni karton« dopolnjen z možnostjo, da lahko večina nacionalnih parlamentov in večina v Evropskem parlamentu kot tudi 55-odstotna večina članov Sveta zavrne zakonodajni predlog. Gre za postopek s t. i. »oranžnim kartonom«. Ta novost se nanaša tudi na odnos Evropskega parlamenta do nacionalnih parlamentov, saj se mora Evropski parlament držati roka osmih tednov, preden

¹⁴⁶ Institut »rumenega kartona« je bil v zgodovini Evropske unije uporabljen zgolj trikrat, nazadnje glede novele Direktive o napotnih delavcih, ko je postopek s t. i. »rumenim kartonom« sprožilo 11 držav članic.

and functioning to the conditions on the European Union by passing a fourth paragraph of the article 3.a of the Constitution. It establishes the duty of the Government in the procedures for adopting legal acts and decisions in international organizations, in which Slovenia has transferred the execution of a part of its sovereign rights to inform the National Assembly about motions of such acts and decisions, and about its activities. The National Assembly can adopt the position it has on the topic, and the Government must consider it. The relations between the National Assembly and the Government are regulated precisely by an act adopted by the National Assembly with a qualified majority. The National Assembly is influencing decisions in the Council of the European Union by cooperating with the Government and by supervising its work.

The National Council has been included in deliberation of EU affairs, because Slovenia's accession to the European Union has also affected its work. This is one of the reasons for the National Council's endeavor to regulate its position in this field on a constitutional or at least on a legislative level. Members of the National Assembly have rejected propositions of the National Council; even though it merely proposed that the National Council should get the documentation directly from the Government, and that it would have an option of direct participation in the National Assembly's working bodies, which can already be achieved by existing regulation. The National Assembly has not incorporated proposed regulation neither in the Constitution, nor in the legislation, but in its Rules of Procedure. In addition to the provision, establishing the invitation of the representative of the National Council to the sessions of the working body competent for the EU affairs, which is extended even if the National Council does not submit an opinion to the committee, new regulation does not bring many novelties for the National Council. The National Council can



lahko zaključijo posvetovanja o določenem predlogu, v tem času pa mora upoštevati prejeta obrazložena mnenja. S takšno ureditvijo je povezan tudi pomemben „simbolični pomen“, saj so nacionalni parlamenti ponovno priznani kot akterji na ravni Evropske unije. To vlogo so aktivno opravljali do leta 1979, ko je bil Evropski parlament posredno voljen in so nacionalni parlamenti imeli v njem svoje predstavnike. Po tem letu pa je Evropski parlament postal edina neposredno voljena institucija na ravni Evropske unije.

V praksi je nastal še en postopek in sicer postopek t. i. »zelenega kartona«. Gre za predlog Doma lordov Velike Britanije, da bi imeli nacionalni parlamenti tudi pristojnost predlagati Evropski komisiji sprejem določenega zakonodajnega akta Evropske unije, kar pomeni, da nacionalni parlamenti pridobijo pozitivnejšo in proaktivnejšo vlogo. Komisija se je obvezala, da bo konstruktivno obravnavala vsako pobudo, v zvezi s katero bi se lahko pričakovala široka podpora nacionalnih parlamentov. Prvi »zeleni karton« je v letu 2015 predlagal Dom lordov Združenega kraljestva¹⁴⁷, kar nakazuje na pomembno vlogo, ki jo imajo nekateri drugi domovi držav članic v okviru oblikovanja evropske zakonodaje.

14. DRŽAVNI SVET IN VLADA

Državni svet ni bil zamišljen kot organ, ki bi nadzoroval delo Vlade, saj mu njegove pristojnosti ne omogočajo opravljanja učinkovitega nadzora nad njenim delom. Iz ustavne ureditve izhaja, da med Državnim svetom in Vlado ni nobenega ustavno določenega neposrednega razmerja, kajti vsa razmerja med zakonodajno in izvršilno

¹⁴⁷ Zeleni karton je bil predlagan glede urejanja področja prehranskih odpadkov.

give an opinion on all matters from the jurisdictions of the National Assembly, including EU affairs. Regarding the National Council Act, the duty of the president of the National Assembly is to send all material related to matters that are part of the agenda, including EU affairs. In this field, on the contrary to the legislative proposals, the National Council can give only opinions and cannot file a veto. Its role is minimal – very similar to the constitutional revision process, the process of adopting the state budget, and appointments to the National Assembly.

The role of the National Council is regulated in the Rules of Procedure of the National Assembly that should be in this part treated as a statutory instrument, because the deliberation of EU affairs is already regulated in the fourth paragraph of the article 3.a of the Constitution as in the legislation. The Rules of the Procedure of the National Assembly have in part a hierarchical position of a law¹⁴³, but that probably is not the case for the subchapter regulating the EU affairs.¹⁴⁴ Regulation of the position of a constitutional body such as the National Council that is regulated in the IV. Chapter of the Constitution directly after the National Assembly, is not appropriate.

That is not only inappropriate; the regulation of its role in this field is also unsatisfactory. The National Council has lost the powers in the fields, transferred to the institutions of the EU. The role of the National Council regarding EU affairs is smaller than the role of

¹⁴³ The Constitutional Court has ruled with a ruling no. U-I-40/96 (Of. Gaz. RS, no. 24/97), the Rules of Procedure has a hierarchical position of a law in a part, regulating the procedure of passing of the acts of the National Assembly even if it formally isn't a law. More on that Štrus, D.: Odložilni veto Državnega sveta Republike Slovenije, o.c., p. 293–315.

¹⁴⁴ An important difference between the regulation of the legislative procedure and the EU affairs procedure in the Rules of Procedure of the National Assembly, is that the legislative procedure is founded directly on the Constitution, when the EU affairs procedure is based on the Constitution and on the legislation. In the latter, the Rules of procedure only executes and complements the Constitution and the legislation and is in accordance with them.

oblastjo, značilna za parlamentarni sistem, se izrecno nanašajo samo na Vlado in Državni zbor. Glede na tako ureditev, se vsi odnosi med zakonodajno in izvršilno oblastjo odvijajo med Državnim zborom in Vlado. Državni svetorej nima pristojnosti pri oblikovanju Vlade, prav tako Vlada ni odgovorna Državnemu svetu. Kljub temu pa ustavne pristojnosti Državnega sveta Vlado vendarle silijo v vzpostavitev določenih razmerij do Državnega sveta. Zato je za položaj Vlade poleg razmerja do Državnega zbora prav gotovo pomembno tudi razmerje do Državnega sveta, ki pa se od prejšnjega bistveno razlikuje. Državni svet ima lahko dokaj močen vpliv na odločanje v Državnem zboru.¹⁴⁸

Ustavno določene pristojnosti Državnega sveta se nanašajo predvsem na njegovo sodelovanje pri izvajanju zakonodajne funkcije. Ker se v okviru te funkcije sprejemajo najpomembnejše odločitve državne oblasti, je razumljivo, da pooblastila Državnega sveta ne vplivajo samo na delovanje Državnega zbora, temveč tudi na delovanje Vlade, čeprav na posreden način. To velja za vsa pooblastila Državnega sveta na področju zakonodajne funkcije, od najšibkejših do najmočnejših. Med prve je mogoče šteti pravico Državnega sveta, da lahko daje Državnemu zboru mnenje o vseh zadevah iz njegove pristojnosti, kar v praksi pomeni, da so mnenja, ki jih daje Državnemu zboru pri zakonodajnem odločanju, lahko nadvse pomembna za vsebino predloga zakona. Res je sicer, da je stvar Državnega zbora, ali mnenja upošteva ali ne, res pa je tudi, da je odločitev Državnega zbora ob tem lahko zelo pomembna za Vlado. Zato je Vlada lahko zainteresirana, da skuša vplivati ne samo na Državni zbor, temveč tudi na Državni svet pri oblikovanju njegovih mnenj.¹⁴⁹ Vlada se zaveda, da odločitve Državnega sveta lahko povzročijo različne

the National Assembly, similarly to the deliberation of national legislation. The National Council can suspend the adoption of a proposed law; however, this option is not available in the deliberation of EU affairs, as it can only give an opinion to the proposition of an act of the European Union. Hence, the position of the National Council is even weaker in the deliberation of EU affairs than in deliberation of national legislation. In comparative law, the regulation is regularly different, as the chambers are in the field of EU affairs equal, or the upper chamber has in comparison to the lower chamber even more powers as it can focus on EU acts, crucial for the state.

With the accession of Slovenia, a part of its sovereignty has been transferred to the European Union. Regarding the loss of powers of the National Council and the National Assembly in the fields transferred to the jurisdiction of the EU institutions, it should be considered that the role of the National Council should be regulated accordingly in the field of EU affairs. As it is well-established in the field of national legislation, the option of filing a veto should be given to the National Council to enter it also on the adoption of the position of the Republic of Slovenia, if it has scrapples about its content. It would be a sort of a suspensory veto in the field of EU affairs that would cause another deliberation in the National Assembly or in its working body, considering once more its position and adopting a final decision. But such a jurisdiction of the National Council can cause additional complexity and subsequently slows the procedure of adopting a position of the Republic of Slovenia in EU affairs. The swiftness of the decision can be crucial for the effective and timely participation of the Government in the EU institutions.

Yet, the National Council has the opportunity to actively participate in the deliberation of EU affairs. Regarding that the National Assembly deliberates on all actual

148 Grad, Franc, 2000:Parlament in vlada, o.c., str. 272.

149 Prav tam.

težave, zato se vključuje v njegovo delo, kar v največji meri velja za razprave o zakonih, ko poskuša Vlada prepričati člane Državnega sveta, naj ne vložijo odločilnega veta. Očitno je torej, da se določenemu vplivu Državnega sveta na delo Vlade ni mogoče izogniti.

Razmerje Državnega sveta do Vlade ureja Zakon o Državnem svetu. Državni svet in njegova delovna telesa imajo pravico od državnih organov zahtevati pojasnila in podatke v zvezi z zadevami, ki jih obravnavajo. Vlada je vseskozi seznanjena s predlogi, mnenji in zahtevami Državnega sveta in se do njih tudi opredeljuje. Razmerje med Državnim svetom in Vlado je natančneje urejeno v Poslovniku Državnega sveta, ki določa, da je Vlada dolžna na zahtevo Državnega sveta in njegovih komisij posredovati vsa gradiva in podatke, ki jih ti potrebujejo pri svojem delu. Poslovnik ureja tudi, da mora biti na dnevnem redu vsake seje Državnega sveta posebna točka dnevnega reda za pobude, vprašanja in zahteve državnih svetnikov. Pobude, vprašanja in zahteve državnih svetnikov, ki jih sprejema Državni svet, morajo biti povezane s pristojnostmi Državnega sveta. Na ta način Državni svet od Vlade in ministrstev pridobiva različne informacije.

Razmerje med Vlado in Državnim svetom končno ureja tudi pristojnost, ki jo določa Ustava, in sicer, da lahko Državni svet zahteva parlamentarno preiskavo, o kateri je več navedenega v poglavju o pristojnostih Državnega sveta. Pomembna značilnost uvedbe parlamentarne preiskave je, da lahko privede do uveljavitve politične odgovornosti predsednika in članov Vlade. Državni svet lahko na ta način posredno vpliva na razmerje med Državnim zborom in Vlado.

EU affairs (or at least it should), it cannot in detail deliberate certain matters that are important for Slovenia in the long term. That can be done by the National Council. With a detailed deliberation of certain important documents, it can make important conclusions that are later incorporated as a suggestion in the submitted opinion to the working body of the National Assembly. Some other regulations in comparative law are similar, especially one of the House of Lords of Great Britain, as it has specialized and got in the field of EU affairs more than the House of Commons. It used to have wider jurisdictions in this field, however, on the brink of the millennium, as the lower house got the same powers, House of Lords started to withdraw doubling of powers when deliberating the EU affairs. It started to select matters on which it deliberates, and divide work between six subcommittees which could deliberate on individual matter in detail.

13.10.1. Jurisdiction of the National Council based on the Lisbon Treaty

The National Council has weak jurisdictions in the Slovenian constitutional order in the field of EU affairs, although it strives towards stronger jurisdictions which would be internationally comparable and even expedient. However, national parliaments also have powers granted by the Lisbon Treaty. Those powers are not strong, but laid down in an interesting way. Considering that it directly granted votes to both chambers, if the member state has a bicameral representative body, the National Council gets equal powers as the National Assembly, even though national legislation provides it with lesser jurisdictions. Such regulation is important for the National Council, as it has lost many jurisdictions during its twenty five years of existence.

15. VLOGA DRŽAVNEGA SVETA NA PODROČJU MEDPARLAMENTARNIH ODNOSOV

Državni svet se aktivno udeležuje tudi na mednarodnem področju. Ne glede na to, da predstavlja šibek drugi dom v sistemu nepopolnega dvodomnega parlamentarnega sistema, je enakopraven, celo ustanovni član Združenja evropskih senatov. Gre za združenje, v katerem se enkrat letno srečajo predstavniki, večinoma predsedniki, petnajstih drugih domov Evrope in luksemburškega Državnega sveta. Slednji v Združenju deluje le kot opazovalec, ker ne gre za klasični drugi dom, ampak za institucijo s področja izvršilne veje oblasti, ki pa ima nekatere tipične pristojnosti drugega doma (npr. suspenzivni veto).

Združenje lahko Državni svet uporabi za zagovarjanje interesov Republike Slovenije, saj so predsedniki drugih domov v evropskih državah zelo pomembni funkcionarji, pogosto uvrščeni tudi pred predsednike prvih domov. Gre za zelo eminentno združenje, na kar nakazuje dejstvo, da so v številnih evropskih državah (npr. Francija, Romunija, Nemčija, Češka, Italija) predsedniki drugih domov na preseančni listi uvrščeni na drugo mesto, torej takoj za šefom države in pred predsednikom prvega doma. Sodelovanje v Združenju evropskih senatov je zato pomembno in prestižno, ne samo za Državni svet, ampak tudi z vidika interesov Republike Slovenije.

V primerjavi s članstvom Slovenije v drugih mednarodnih organizacijah, je članstvo Državnega sveta v Združenju evropskih senatov brezplačno, medtem ko je treba za članstvo v drugih mednarodnih organizacijah plačevati članarino. Tako Slovenija plačuje več kot 12 milijonov evrov letno za članarine v različnih mednarodnih organizacijah (npr. v OZN 5,8 milijonov evrov, v OECD 2,4 milijone evrov, v NATO 5,4 milijone evrov).

The direct participation of the national parliament in EU affairs is established by the Lisbon Treaty¹⁴⁵ and two protocols, added to the treaty – the Protocol on the role of national parliaments in the European Union, and the Protocol on the application of the principles of subsidiarity and proportionality. The protocol on the role of national parliaments in the European Union lies down that the documents about the consultation of the Commission (the green and white papers) are sent directly to the national parliament by the Commission when they are announced. The Commission has to send also the annual legislative program and all other instruments of legislative planning and political strategies, at the same time as it sends it to the European Parliament and to the Council.

The Protocol on the application of the principles of subsidiarity and proportionality for the first time awarded to national parliaments the option of early warnings, with which it can achieve the review of the draft law, considering the principle of subsidiarity. Every national parliament or its chamber can offer a reasoned opinion, stating the reasons why the draft law is not in accordance with the principle of subsidiarity in eight weeks after the conveyance of the draft law to the president of the European Parliament, the Council and the Commission. If the reasoned opinion represents at least a third of votes (a fourth of votes, if the draft law refers to the area of freedom, security and justice) allocated to the national parliaments, the institution that put forward the draft law needs to reconsider its proposal and then decide on preservation, change, or withdrawal of the draft law. This procedure is called the yellow card procedure.¹⁴⁶

.....
¹⁴⁵ It is a second subparagraph of the third paragraph of the article 5. and the article 12.b of the Treaty of the EU.

¹⁴⁶ Institute of the yellow card was in the history of the EU used only three times, lastly for the amendment of the directive on the posted workers, when the yellow card procedure was launched by 11 member states.



Državni svet sodeluje s predstavniškimi telesi drugih držav, z mednarodnimi parlamentarnimi institucijami ter z mednarodnimi organizacijami. V okviru svojega dela vzdržuje stike z drugimi parlamenti, tako evropskimi kot svetovnimi, ter z mednarodnimi organizacijami. Državni svetniki se udeležujejo konferenc in srečanj, pri čemer so na parlamentarna srečanja ponavadi vabljeni predstavniki delovnih teles, ki po svojem področju spadajo v delokrog vabitelja. Ker državni svetniki v Državnem svetu zastopajo specifične interese, se pri sestavi delegacij upošteva interesno in strokovno ozadje posameznega svetnika, ki pogosto pripomore k višji ravni predmetne razprave. Predstavniki Državnega sveta se redno udeležujejo različnih parlamentarnih konferenc (npr. Konferenca predsednikov odborov za evropske zadeve parlamentov držav članic Evropske unije in Evropskega parlamenta). Pri udeleževanju predsednika in članov Državnega sveta na parlamentarnih konferencah in srečanjih se Državni svet pogosto usklajuje s predstavniki Državnega zbora.

16. VLOGA POLITIČNIH STRANK V DRŽAVNEM SVETU

Odločilno vlogo v delovanju sodobnih parlamentov imajo politične stranke. Vendar imajo kljub temu z vidika delovanja parlamenta politične stranke v Državnem zboru in v Državnem svetu različno vlogo. V nasprotju z Državnim zborom, ki je v naši ureditvi zasnovan kot splošno predstavniško telo, v delovanju katerega imajo odločilno vlogo ravno politične stranke, je bil Državni svet zasnovan na ideji popolnega odmika politike od delovanja omenjenega organa. Ta ideja se odraža tudi v pravni ureditvi, saj Zakon o Državnem svetu ne določa vloge političnih strank niti pri volitvah v Državni svet niti pri organizaciji Državnega sveta. Glede na to, da je Državni svet zastopstvo

Every national parliament and its chambers have allocated two votes. If the system is bicameral, every chamber has a vote. The National Council, as the upper chamber of the Slovenian Parliament, also has a vote.

In the before-mentioned Protocol to the Lisbon Treaty, the yellow card procedure was supplemented with an option of the majority of national parliaments, the majority in the European parliament, and the 55 percent majority of the members of the Council, dismissing the legislative proposal. This is the orange card procedure. This novelty refers also to the relation of the European Parliament towards the national parliament, as the European Parliament has to wait for a period of eight weeks, before it can end the consultations on a legislative proposal. In this time, it has to consider received reasoned opinions. This has a symbolic meaning, as the national parliaments are again acknowledged as participants on the level of the EU. They actively performed such a role until 1979, when the European Parliament was still elected indirectly and consisted of national parliaments. After 1979, the European Parliament became the only directly elected institution on the level of the European Community.

In practice, a green card procedure also came into existence. It was a proposition of the House of Lords of Great Britain to give to national parliaments also the power to propose to the European Commission an adoption of a legislative act of the EU, giving a more positive and proactive role to national parliaments. The Commission had bind itself to constructively deliberate on every initiative, for which a wide support of national parliaments is assumed. The first green card was proposed by the House of Lord of United Kingdom¹⁴⁷ in 2015, show-

147 A green card was proposed regarding the regulation of food waste management.

lokalnih in funkcionalnih interesov, imajo pri volitvah v Državni svet ključno vlogo predvsem interesne organizacije. Državni svetniki pa se, v nasprotju s poslanci, ne združujejo v poslanske skupine in poslanske klube, ki so politične narave, ampak v interesne skupine. Državni svet in njegovi člani niso v enaki meri podrejeni vplivu političnih strank in njihovih vodstev, kot to velja za Državni zbor in poslance, in ravno zato se pri njihovem delu negativne posledice »strankokracije« občutijo bistveno manj. Prav nepoklicno opravljanje svetniške funkcije naj bi prispevalo k večji povezanosti svetnikov z organizacijami in lokalnimi skupnostmi, ki jih zastopajo v Državnem svetu, in manjši odvisnosti od političnih strank. V teoriji je mogoče zaslediti celo mnenja o tem, da drugi dom izgubi svoj smisel, če velja za drugi dom enak sistem splošnih volitev, če so politične stranke v enakem institucionalnem odnosu do obeh domov in če imajo poslanci obeh domov celo skupne strankarske klube itd.¹⁵⁰

Kljub navedenemu se je v praksi izkazalo, da se politiki in političnim strankam tudi v Državnem svetu ni mogoče izogniti. Res je, da zakonodaja političnim strankam ne določa nikakršne formalne vloge v volilnem postopku Državnega sveta (predlaganje kandidatov, članov volilnih odborov ipd.), vendar pa določa, da elektorje in kandidate za člane Državnega sveta med drugim izvolijo tudi predstavniška telesa lokalnih skupnosti, torej občinski sveti. Glede na to, da imajo pri volitvah občinskih svetov politične stranke ključno vlogo in so torej politične stranke še kako vpete v delo predstavniških teles lokalnih skupnosti, imajo politične stranke neformalno močno vlogo tudi pri volitvah elektorjev in kandidatov za člane Državnega sveta. Določajo namreč elektorje in kandidate za člane Državnega sveta v vseh 22-ih volilnih enotah za volitve v

ing an important role of particular upper chambers of member states in formation of the European legislation.

14. THE NATIONAL COUNCIL AND THE GOVERNMENT

The National Council was not meant to be a body that would oversee the Government, because its powers do not enable an effective oversight over the Government's work. There is no direct constitutionally founded relation between the National Council and the Government, as all relations between the legislative and the executive authority, typical for the parliamentary system, are explicitly related only to the Government and the National Assembly. Because of that, all relations between the legislative and executive authority are concentrated between the National Assembly and the Government. The National Council has no jurisdiction regarding the formation of the Government, and the Government is not responsible to the National Council. Nevertheless, constitutional powers of the National Council compel the Government to form specific relations towards the National Council. These relations are important for the Government in addition to its relations to the National Assembly despite great differences among them. The National Council has a relatively strong influence on decision-making in the National Assembly.¹⁴⁸

Constitutional powers of the National Council refer especially to the participation with the execution of the legislative function. Because the most important decisions of the national authority are adopted in this function, it is understandable that National Council's powers do not only affect the National Assembly, but also have an influence on the work of the Government, even if only

¹⁵⁰ Dvodomnost – demokracija in vloga civilne družbe, Tretje srečanje Združenja evropskih senatov, Ljubljana, 28. junija 2002, str. 43.

¹⁴⁸ Grad, F.:Parlament in vlada, o.c., p. 272.

Državni svet. V praksi so zato vsi člani Državnega sveta, ki predstavljajo lokalne interese, člani političnih strank. Ob tem je treba poudariti, da je neformalna vloga političnih strank pri volitvah v Državni svet lahko celo večja kot formalna vloga političnih strank pri volitvah v Državni zbor. Volilna telesa za volitve predstavnikov lokalnih interesov v Državnem svetu so namreč po velikosti manjša in jih kot take politične stranke lažje obvladujejo. V interesu slednjih pa je, da v ta telesa imenujejo svoje člane.

Posredne volitve Državnega sveta na ta način omogočajo, da pride pri volitvah članov do političnega trgovanja. Izbiro elektorjev namreč opravijo občinski sveti, na njihovo sestavo in delovanje pa vplivajo politične stranke. Prav zato bi bile za volitve Državnega sveta neposredne volitve bolj primerne od posrednih, saj bi onemogočile politično trgovanje. Poleg tega za neposredne volitve velja, da večajo legitimnosti izvoljenih članov.

17. SODELOVANJE DRŽAVNEGA SVETA IN CIVILNE DRUŽBE

Državni svet je zagotovo institucija, ki si prizadeva vzdrževati dobre odnose s civilno družbo. Ravno zaradi sodelovanja s civilno družbo Državni svet tudi pogosto predstavlja most med državljani in politiko. Kot institucionalizirana oblika zastopstva različnih družbenih interesov, ki so razvidni iz sestave Državnega sveta, je Državni svet njihov legitimen predstavnik. Institucionalizirana volilna baza petih interesnih skupin se je namreč razširila na večino relevantnih segmentov družbe, tudi na civilno družbo. Poleg teh segmentov v Državni svet prek dopolnjujočih aktivnosti Državnega sveta, ki se kažejo predvsem v organiziranju številnih posvetov, predavanj, različnih oblik javnih razprav in drugih dejavnostih državnega sveta, vstopajo številne

indirectly. That refers on all the jurisdictions of the National Council in the legislative branch, from the weakest to the strongest one. The power to submit an opinion to the National Assembly on all matters of its jurisdiction can be identified as amongst the first. Nevertheless, in practice such opinions can be exceedingly important for the contents of the legislative proposal. It is true that it depends on the National Assembly whether the opinions will be considered or not. It is also true that such a decision is important for the Government, because of which it can be interested to influence not only the National Assembly, but also the National Council, as they are forming the opinions.¹⁴⁹ The Government realizes that decisions of the National Council can cause many troubles and that is why it participates in its work, especially when deliberating on the acts, as the Government tries to persuade the members of the National Council not to file a veto. It is obvious that the influence of the National Council on the work of the Government cannot be eliminated completely.

Relation of the National Council towards the Government is regulated by the National Council Act. The National Council and its working bodies have a power to request explanations and data regarding the relevant matters for its work from the national authorities. The Government is acquainted at all times with the proposals, opinions and requests of the National Council and often expresses its opinion towards them. The relation between the National Council and the Government is regulated in detail in the Rules of Procedure of the National Council, which establish the duty of the Government to convey on request all material and data that is needed for the work of the National Council and its commissions. The Rules of Procedure lay down the necessity of a special agenda item of every session of the National Council for initiatives, questions and

¹⁴⁹ Ibid.

inicijative civilne družbe, ki niso zajete ali pa so zapostavljene v institucionaliziranih mehanizmih petih interesnih skupin.

Državni svet je v petindvajsetih letih organiziral preko 750 različnih dogodkov (npr. posvetov, predavanj, okroglih miz). Število teh se iz mandata v mandat veča. V prvem mandatu je bilo teh dogodkov manj kot 70, v aktualnem mandatu pa bo njihovo število preseglo 300.¹⁵¹ Prek posvetov Državni svet opozarja ljudi na aktualne probleme v družbi ter jim omogoča, da aktivno sodelujejo v razpravi s priznanimi strokovnjaki z različnih področij. Smisel organizacije omenjenih dogodkov je predvsem v tem, da Državni svet pridobi kar največ raznolikih in argumentiranih mnenj, na podlagi katerih lahko kasneje z izvrševanjem svojih pristojnosti (npr. z zakonodajnimi iniciativami, mnenji) predlaga uvedbo potrebnih sprememb v slovenskem pravnem redu. Državni svet si prizadeva, da bi na posvete in okrogle mize privabil kar največje število predstavnikov zainteresirane javnosti, kajti njegov namen ni zgolj informirati, ampak pridobiti tudi odzive na svoje delo. Ravno od tod izvirajo številne ideje in energija za delovanje Državnega sveta. Mnenja, ki jih Državni svet oblikuje na podlagi posvetov in okroglih miz, posreduje v zakonodajni postopek. Sicer pa z zaključki s posveta seznanjeni pristojne institucije. Pogosto se zgodi, da mnenja prevzamejo tudi navzoči predstavniki izvršilne oblasti, ki jih prelijejo v vladne zakonske predloge. Teme posvetov izhajajo tako iz gospodarstva, kulture, politike, zdravstva kot iz sociale, iz česar je razvidno, da se nanašajo na vsa področja, ki so ključna za razvoj družbe.

Državni svet se je pogosto lotil organizacije posvetov o položaju slovenščine v šoli in javnosti ter o njeni zaščiti (npr. v letih 2000, 2006, 2016). Državni svet je v letu 2000 predlagal Zakon o rabi slovenščine kot uradnega jezika, ki ga je

¹⁵¹ V petem mandatu je Državni svet organiziral že 295 dogodkov, tako da lahko z gotovostjo trdimo, da bo njihovo število preseglo število 300 do konca mandata v decembru tega leta.

requests of the members of the National Council, which need to be in relation to the jurisdictions of the National Council. In this way, different information is gathered from the Government and ministries by the National Council.

Finally, the relation between the Government and the National Council is regulated by the Constitution granting the latter the power to request a parliamentary inquiry, about which enough was said in the chapter on jurisdictions of the National Council. The most important characteristic of the parliamentary inquiry is that it can lead to political responsibility of the Prime Minister and other members of the Government. The National Council can thus indirectly influence the relation between the National Assembly and the Government.

15. NATIONAL COUNCIL'S ROLE IN THE INTER PARLIAMENTARY RELATIONS

The National Council is also active in the international field. Even though it is a weak upper chamber in an imperfect bicameral parliamentary system, it is an equal and a founding member of the Association of European Senates. Within the association, a meeting of representatives occurs annually, normally of its presidents, the fifteen upper chambers of Europe, and the Luxembourg's National Council. The latter has the position of an observer, as it is not a classical upper chamber, but an institution of the executive authority that has some typical jurisdictions of the upper chamber, such as a suspensory veto.

The association can be used by the National Council to advocate for the interests of the Republic of Slovenia, because the presidents of the upper chambers of European states are very important officials, that are often more important than the president of the lower chamber. It is an association of great eminence, as the presidents of the second

kasneje zaradi napovedane vložitve novega predloga zakona skupine poslancev umaknil iz zakonodajnega postopka. Na podlagi posveta in kasnejšega predloga Državnega sveta je bil v letu 2004 sprejet Zakon o javni rabi slovenščine.

Državni svet se je na posvetih večkrat ukvarjal s problematiko drog v Sloveniji (v letu 2005 je izdal tudi strokovni zbornik z naslovom Problematika drog v Sloveniji) in konoplje. Pri obravnavi Predloga zakona o konoplji leta 2014 je pristojna komisija Državnega sveta pozvala Ministrstvo za zdravje k oceni morebitnih učinkov liberalnejšega pristopa do uporabe konoplje na vseh, v predlogu zakona izpostavljenih področjih. Na podlagi sklepa komisije, ki ga je povzel tudi pristojni odbor Državnega zbora, je Vlada pripravila spremembe in dopolnitve Uredbe o razvrstitvi prepovedanih drog, s katero se ureja uporaba rastline konoplja v medicinske namene. Na ta način je Državni svet preko svoje komisije prenesel problematiko iz posveta v mnenje in preko Vlade v spremembo podzakonske ureditve na tem področju.

Poleg omenjenih posvetov organizira Državni svet tudi več predavanj, javnih razprav, tribun, okroglih miz in soočenj. Na ta način ne samo krepí svojo mednarodno vlogo, pač pa tudi omogoča slovenski javnosti predstavitev tujih strokovnih praks. Ni odveč poudariti, da so pri tujih strokovnih predavanjih v preteklosti prevladovali predvsem teme o Evropski uniji, državi, ekologiji in finančah.

Na vse omenjene aktivnosti Državni svet vabi vso zainteresirano javnost. Pri organizaciji posvetov je Državni svet sodeloval že s preko 150 združenji, strokovnimi društvi, organizacijami, inštituti in državnimi organi. Prek sodelovanja z omenjenimi organizacijami se Državni svet trudi, da bi v razprave o različnih problematikah družbenega življenja privabil širši krog civilne družbe. Namen posvetov, kot že navedeno, ni samo osveščanje slušateljev,

chambers are in many European states (for example France, Romania, Germany, Czech Republic, Italy) ranked second on the PRESEANČNI list, only behind the head of the state and in front of the president of the lower chamber. The participation in the Association of European Senates is important and prestigious not only for the National Council but also from the viewpoint of interests of the Republic of Slovenia.

Unlike the membership of Slovenia in other international organizations, this is one free of admission. Slovenia is in such a way paying more than 12 million Euro annually for admissions in the international organizations (for example 5.8 million Euro for the UN; 2.4 million Euro for OECD, 5.4 million Euro for NATO).

The National Council is cooperating with representative bodies of other states, with international parliamentary institutions and with international organizations. Within the framework of its powers, it maintains contacts with other European and global parliaments and with the international organizations. Members of the National Council are participating in conferences and meetings. More often, only the representatives of the working bodies that are in the same range of activities as the host are invited. Because members of the National Council are representing specific interests in the National Council, the background of interest and expertise is considered when composing the delegation. This often contributes to a higher level of discussion in question. The representatives of the National Council are regular participants of many parliamentary conferences (for example Conference of the presidents of Parliamentary Committees for Union Affairs of Parliaments of the European Union and the European Parliament). The activities of its president and its members at the parliamentary conferences and meetings are often coordinated with the representatives of the National Assembly.

ampak tudi pridobivanje povratnih informacij in mnenj s strani civilne družbe.

Državni svet se je v petindvajsetih letih delovanja osredotočil na vzpostavitev in ohranjanje odličnih odnosov z organizacijami in združenji civilne družbe. To sodelovanje se je razvilo v praksi, zaradi česar se civilna družba redno obrača na Državni svet za organizacijo posvetov, javnih razprav, okroglih miz ipd. To vlogo Državni svet opravlja veliko lažje kot Državni zbor, saj ni tako obremenjen z dnevno politiko in nima tako obsežnih dnevnih redov sej, s katerimi se morajo ukvarjati Državni zbor in njegova delovna telesa. To je prednost Državnega sveta, ki jo velja izkoristiti tudi v prihodnje, saj se na ta način ne le vključuje civilna družba v delo Državnega sveta, ampak se delovanje te ustavne institucije približa državljanom.

Nekoliko drugačni po vsebini so posveti z volilno bazo, preko katerih se svetniki, predstavniki posameznih interesov v Državnem svetu, obračajo na svoje volivce, jim predstavljajo svoje delo, svoje prihodnje usmeritve in izmenjujejo mnenja o različnih zadevah. Ohranjanje stikov z volilnimi bazami skozi celoten mandat je značilnost delovanja svetnikov v Državnem svetu, ki predstavlja napreden način predstavljanja interesov v sodobni družbi.

Državni svet posveča posebno pozornost družbeni aktivnosti posameznikov, ki prostovoljno prispevajo k pozitivnim spremembam v družbi. Podpira in nagrajuje vse posameznike, ki prostovoljno opravljajo družbeno koristno delo. Ravno zato vsako leto v počastitev mednarodnega dneva prostovoljstva, 5. decembra, slavnostno podeljuje plakete Državnega sveta najzaslužnejšim prostovoljcem, kot odraz podpore civilni družbi.

Izpostaviti je treba tudi projekt, ki ga je spodbudil Državni svet in se imenuje Rastoča knjiga. Gre za projekt, v katerem se poudarja in podpira vlogo slovenske knjige, saj je knjiga sopotnica Slovencev že več kot tisoč let. Projekt predstavlja pomnik vsem tistim Slovincem v zgodovini,

16. THE ROLE OF POLITICAL PARTIES IN THE NATIONAL COUNCIL

Political parties are playing the main role in the functioning of modern parliaments. Nevertheless, they have a different role in the National Council than in the National Assembly. Unlike in the National Assembly, which is founded as a general representative body where political parties do play the main role, the National Council was based on the idea of putting aside politics in its functioning. This idea is seen in the regulation, as the National Council Act does not regulate the role of political parties regarding elections or organization of the institution. The National Council is representative of local and functional interests, so interest organization hold the leading role in its elections. The members of the National Council, to the contrary of the members of the National Assembly, do not form political parties and political clubs of political nature, but groups of interest. The National Council and its members are not affected as much by the influence of political parties and their leading boards, as the case of the National Assembly and its members, so that considering their work the negative effects of a system taken over by parties are minimized. The non-professional nature of their function ensures a closer connection to the represented organizations and local communities, as well as smaller dependence from the political parties. In theory, there are even opinions that the upper chamber loses its purpose if elected in the same way as the lower chamber, if the political parties are in the same institutional relation to both chambers, if the members of both chambers have common party clubs etc..¹⁵⁰

In spite of all that, the practice has shown that political parties cannot be avoided even in the National

150 Dvodomnost – demokracija in vloga civilne družbe, Tretje srečanje Združenja evropskih senatov, Ljubljana, 28. junija 2002, p. 43.



ki so tvorno prispevali k ideji slovenstva. Državni svet s projektom Rastoča knjiga dokazuje, da podpira slovenske narodno zavedne ideje, saj gre pri tem za korak k iskanju slovenske kulture, identitete in samozavesti, ki so še kako pomembni v času globalizacije in vse večjega povezovanja Evrope in sveta. Projekt Rastoča knjiga je tudi prvi tovrstni projekt v svetu, s katerim bi določen narod želel s svojo kulturo obogatiti svetovno zakladnico. Gre za plemenito in dobronamerno idejo.

18. SKLEP

V petindvajsetletni praksi delovanja se je Državni svet uveljavil kot drugi dom slovenskega parlamenta in dokazal, da lahko pomembno prispeva h kvaliteti sprejete zakonodaje. Kljub temu, pa je predstavljeno delo jasno pokazalo, da se ta organ še vedno sooča s številnimi težavami, ki so rezultat tako ustavne kot zakonske podnormiranosti omenjenega organa. Na ustavni ravni bi lahko po 25-ih letih celoviteje uredili status drugega doma parlamenta predvsem glede temeljev volitev in ureditve veta. Prenova postopka ponovnega odločanja je smiselna ne samo s primerjalno-pravnega in razvojnega vidika, z vidika teorije in prakse dvodomnosti, ampak predvsem z vidika prizadevanj za sprejemanje bolj kakovostne zakonodaje. Namen izboljšave postopka ponovnega odločanja je tudi zmanjševanje števila primerov, ko prihaja do različnih razlag zakonodaje in nujnih sprememb, pa tudi sodnih sporov in ustavnih pritožb ter pobud za presojo ustavnosti zakonov pred Ustavnim sodiščem. To je izrednega pomena ne le z vidika učinkovitega delovanja parlamenta, temveč tudi z vidika varstva človekovih pravic in zlasti uveljavljanja pravne varnosti in drugih načel pravne države. Kakovost sprejetih zakonov je upravičeno temeljno merilo za presojo učinkovitosti vsakega parlamenta,

Council. The legislation does not lay down any formal role of political parties in the electoral procedure of the National Council (candidate proposal, proposal of the members of electoral committees), but it establishes that electors and the candidates for members of the National Council are elected by the representative bodies of the local communities - municipal councils. Political parties have a main role in their elections, so they are very important for the functioning of the body; therefore they informally have a very strong position in electing the electors and candidates for the members of the National Council. They are elected for all 22 constituencies. In practice, all representatives of the local interests are members of political parties. It has to be stressed that the unformal role in the National Council's elections can be even larger than the formal one in the elections of the members of the National Assembly; the electorate is smaller and easier to be managed by political parties, in whose interest is to win seats for members of their own party.

In this way, indirect elections of the National Council enable political trading when electing its members. The selection of electors is done by municipal councils, whose structure and functioning is influenced by the political parties. The direct elections would be more suitable, as the political trading would be rendered impossible, and the legitimacy of the elected members would increase.

17. COOPERATION OF THE NATIONAL COUNCIL AND THE CIVIL SOCIETY

The National Council is recognized as an institution that works hard on its relations with the civil society. Consequently it is often seen as a bridge between the citizens and the politics. As an institutionalized form of representation for different social interests that comprise the National

tudi slovenskega. To je tudi skladno z idejo profesorja Leonida Pitamica, ki je v svojem delu *Država iz 1927*. leta poudarjal prispevek drugega doma k preudarnejšemu zakonodajnemu odločanju, pri katerem je okrepljen vpliv stroke in oslavljen vpliv političnih strank.¹⁵² Kot je bilo pojasnjeno, bi bilo tudi ustavnopravno korektno, da bi temeljna razmerja med obema institucijama zakonodajne veje oblasti uredili v zakonu o razmerjih med Državnim zborom in Državnim svetom.

V preteklosti je Državni zbor zavrnil številne predloge za uvedbo primernih, nekoliko močnejših ustavnih, zakonskih ali poslovnih pristojnosti Državnega sveta (npr. na področju zadev Evropske unije, postopek ponovnega odločanja). Drugače je s predlogi, ki pristojnosti Državnega sveta in možnosti njegovega delovanja krčijo in šibijo, saj so bili ti v večini sprejeti in jih je bilo v času petindvajsetletnega obstoja Državnega sveta že kar nekaj. Glede na to, da je vloga drugih domov močnejša na področjih, kjer drugi dom ne nasprotuje prvemu domu in vladi, ampak z njima sodeluje, bi bilo zelo primerno, da bi Državni svet pridobil močne, enakopravne pristojnosti z Državnim zborom vsaj na področju zadev Evropske unije. Ob izjemni količini aktov in dokumentov s tega področja, bi lahko Državni svet dopolnjeval in lajšal delo, ki ga sedaj opravlja zgolj Državni zbor.

Za prihodnjo vlogo Državnega sveta je pomembna tudi ustavna sprememba glede ureditve pokrajin¹⁵³, zato obstaja nova možnost spremembe ureditve Državnega sveta. Po vzpostavitvi pokrajin bi ta lahko postal zastopstvo pokrajin in tako pridobil pomembne pristojnosti v zakonodajnem postopku kot varuh pokrajinskih interesov.

152 Grad, F.; Ribičič, C., Štrus, D.: *Spremembe Poslovnika Državnega zbora glede ponovnega odločanja o zakonu na podlagi veta Državnega sveta*, Inštitut za ustavno pravo, Ljubljana, 2015, str. 2.

153 Ustavno spremembo glede ureditve pokrajin je Državni zbor sprejel leta 2006, pokrajine pa bodo ustanovljene s posebnim zakonom, ki ga Državni zbor še ni sprejel.

Council, it is as such their legitimate representative. The institutionalized electoral base of the five interest groups encompasses most sectors of civil society. Additionally, numerous civil initiatives which were not covered or otherwise set out within the institutionalized mechanisms of the five interest groups, have entered the National Council. This was achieved through National Council's supplementary activities which include numerous consultations, lectures, various forms of public debate, and other activities.

The National Council has in the past twenty five years organized more than 750 different events (consultations, lectures, round tables) - and the number is growing. In the first mandate, there were less than 70 such events, and today, there are more than 300.¹⁵¹ The National Council has used the consultations to illustrate to people the problems present in the society, and to enable them an active participation in a debate with recognized experts from different fields. The idea behind the organization of such events is to obtain as many varied and significant opinions as possible, which the National Council could then include within Slovenia's legal system via its own jurisdictions (for example the legislative initiative, opinions). The National Council attempts to invite a wide cross-section of civil society to debates on various social issues. The purpose of the consultations is not only to raise public awareness, but also to obtain feedback and opinions from civil society. The National Council receives energy and many new ideas through these activities. It frequently incorporates opinions presented at the consultations and round tables into its own positions and communicates them within the legislative process. Otherwise, it familiarizes the competent authorities with the conclusions of the consultations. The representatives of the executive branch

151 In the fifth mandate the National Council has organized already 295 events, so we can legitimately assume their number will exceed the number 300 until the end of the mandate in December of 2017.

Poudariti je treba, da s kakršnimikoli spremembami ni nujno in ni priporočljivo hiteti. Najprej je treba odpreti široko razpravo in proučiti najboljše rešitve dvodomnosti, ki bi bile primerne za ureditev v Sloveniji. V praksi največ predlogov za spremembo Ustave ter sprejem in spremembo zakonov predlaga Vlada (tako v Sloveniji kot tudi v tujini). Vendar je prav Vlada tista, ki ji ponavadi ne ustreza reforma in krepitev drugega doma, saj bi to lahko zmanjšalo njen vpliv v drugem domu (to še posebej velja za špansko, irsko in kanadsko ureditev) ali pa bi povečalo učinkovitost drugega doma, torej tudi Državnega sveta.

Žal v Sloveniji ideja o doprinosu dvodomnosti k večji demokratizaciji in boljši uveljavitvi sistema zavor in ravnosij še ni v popolnosti sprejeta, čeprav je v sodobnih razvitih državah že dalj časa uveljavljena v teoriji in se kaže tudi v praksi. Drugi dom, ki v drugačni sestavi in z različnimi instrumenti kot prvi dom sodeluje v zakonodajnem postopku, zagotavlja sprejem kvalitetnejših zakonov. Zamisel o Državnem svetu, ki pomaga Državnemu zboru sprejeti kvalitetnejšo zakonodajo, je torej smotrna, umestna, mednarodno primerljiva in jo velja razvijati dalje v smislu učinkovitega dvodomnega predstavniškega telesa.

Zaradi majhne verjetnosti sprememb pristojnosti Državnega sveta na ustavni, zakonski in poslovniški ravni, ki bi prispevale k večanju pristojnosti omenjenega organa, mora Državni svet po 25-ih letih pri svojem delovanju upoštevati predvsem prednosti tega organa, ki jih ne prepozna le strokovna temveč tudi laična javnost. Državni svet mora pri svojem delovanju ohraniti odmik od dnevne politike in prek strokovnih znanj posameznih članov Državnega sveta predvsem skrbeti za kvalitetne razprave, ki bodo omogočale čim večji stik omenjenega organa s civilno družbo. Državni svet je drugi dom parlamenta, ki predvsem zaradi svoje posebne sestave in načina delovanja velja za unikaten zgornji dom tudi onkraj naših meja. Ravno to in vloga Državnega sveta kot mosta med

of power who attend, often directly incorporate these ideas into the Government's draft laws. The topics of the consultations are from the field of economy, culture, politics, healthcare and social care, which are all crucial for the development of the Slovenian society.

The National Council has often organized consultation on the role of the Slovene language in school and in public, and about its protection (for example in 2000, 2006 and 2016). The National Council has proposed Use of Slovene as an Official Language Act in 2000, but was later withdrawn, as a group of members of the National Assembly announced a new proposal of an act. In 2004 the Public Use of the Slovene Language Act was passed, which was based the consultation and the National Council's proposed act.

Additionally, numerous National Council's consultations on the matter of illegal drugs and hemp in Slovenia took place. In 2005 it has also issued miscellanies named Problem of drugs in Slovenia. When deliberating the proposal of Hemp Act in 2014, the responsible commission of the National Council has requested an evaluation from the Ministry of Health about the effects of a more liberal approach towards the usage of hemp in all fields that were pointed out in the proposal of the act. Based on the conclusion of the commission of the responsible committee of the National Assembly, the Government prepared modifications to the Decree on the classification of illicit drugs, which regulates the usage of Indian hemp for medical purposes. In this way, the National Council has transferred a pressing matter from the consultation into an opinion and into a concrete change of a statutory instrument on this field conducted by the Government.

Besides the consultations, the National Council organizes also lectures, public debates, round tables and other meetings. This way it strengthens its international position, as well as enables a representation of foreign

civilno družbo in politiko so razlogi, da številni drugi domovi v Evropi in po svetu visoko cenijo izkušnje Državnega sveta in strmijo k čim aktivnejšemu povezovanju z omenjenim organom.

Res je, da so imeli snovalci slovenske Ustave ob njenemu sprejemu različne ideje, kakšna bo vloga in kakšne bodo pristojnosti Državnega sveta, vendar je ta organ v petindvajsetih letih našel svoje mesto v slovenskem parlamentarnem sistemu. Določene pristojnosti Državnega sveta, predvsem pristojnost zahtevati razpis referendumu, so bile skozi zgodovino ukinjene, vendar je kljub temu v praksi pridobil pomembno vlogo, ki ni odraz zgolj njegovih pristojnosti v okviru zakonodajnega postopka, temveč tudi prek vseh drugih aktivnosti, ki jih Državni svet izvaja. V prihodnosti se bo Državni svet zagotovo soočal z nekaterimi aktualnimi in s številnimi novimi izzivi, vendar verjamem, da bo pri tem uspešen, če bo le pri iskanju rešitev vedno strmel k strokovnosti in ne političnosti razprav in k poglobljanju stikov s civilno družbo.

expert practices to the Slovenian public. When talking at foreign lectures about expertise, the topics that were the most common focused on the European Union, the state, the ecology and the finance.

To all these activities, the National Council invites all interested publics. When organizing consultations, the National Council has cooperated with more than 150 associations, expert societies, organizations, institutes and other national authorities. With the cooperation with those organizations, the National Council wants to include a wider section of the civil society into debates about problems of the society. The purpose of consultations, as previously mentioned, is not only educating the present audience, but also to receive feedback from the civil society.

The National Council has in its twenty five years of functioning focused on restoration and preservation of good relations with the organizations and associations of the civil society. Such cooperation has evolved in practice, as the civil society often asks the National Council for the organization of consultations, public debates, round tables etc. The National Council can do such tasks much easier than the National Assembly, as it is not encumbered as much with the daily politics and as does not have such lengthy agendas of its sessions. That serves as an advantage that should also be used in the future, because it not only enables the inclusion of the civil society in the work of the National Council, but also brings its functioning closer to the citizens.

The content of the consultations with the electoral base is somewhat different, as the members of the National Council that are representatives of individual interests, explain their work and aims for the future, and exchange opinions on different matters. Keeping contacts with their electoral bases is a crucial part of their function throughout the entire mandate, representing an advanced form of representation of interests in a modern society.



The National Council devotes special attention to the social activity of individuals that voluntarily contribute to positive changes in the society. It supports and awards all individuals that freely take part in community service work. That is why every year on December 5th – the International Volunteer Day, the National Council grants plaques to the most qualified volunteers, as a sign of support to the civil society.

The Rising Book project should be pointed out, as it was strongly supported by the National Council. It is a project in which Slovenian literature is supported and financially stimulated, with the recognition for its part in the Slovenian society for more than a thousand years. It represents a memory to all those Slovenes in history, who have actively contributed to the idea of the Slovenian nation. The National Council proves with this project, that it fully supports national consciousness, as it goes towards reaching the Slovene culture, identity and self-confidence, which are all very important in the time of globalization and more intense connection of Europe and the world. The Rising Book is the first project of its kind in the world, considering that a nation would like to enrich world's treasury with its own culture. It is a noble and a well-intentioned idea.

18. CONCLUSION

In its twenty five years of functioning, the National Council has established itself as the upper chamber of the Slovenian parliament, and proved its power of significantly influencing the quality of the legislation. Even though this work has shown countless problems that the body is facing as a consequence of limited constitutional and legislative normative regulation. On the constitutional level, we should -- after 25 years, more comprehensively regulate the position of the upper chamber of the parliament, especially regarding the foundations of the elections and of the power of veto. New regulation of reconsideration of an act procedure would be reasonable, not only when compared to the comparative legislation abroad, from the progressive point of view, or from the approach of theory and practice of

bicameralism, but also in light of the endeavor for higher quality legislation. The purpose of renovating this procedure is also in lowering the number of cases of different interpretations of legislation and its emergency changes, as well as of judicial disputes, constitutional complaints, and initiatives for ruling on the constitutionality and legality of legislation before the Constitutional Court. All this is of an extraordinary importance not only because of the effectiveness of the parliament, but also for the protection of human rights and especially as a possible safeguard for the principle of legal safety and the rule of law itself. The quality of passed laws is a justified criterion for the assessment of the effectiveness of every parliament, of which the Slovenian is no exception. That is in accordance with the idea of the professor Leonid Pitamic. In his work *The State from the year 1927*, he emphasized the contribution of the upper chamber to a more prudent legislative decision-making, where the expertise has more influence than political parties.¹⁵² As previously mentioned, it would be constitutionally appropriate to regulate the relations between both institutions of the legislative authority in the Relations between the National Assembly and the National Council Act.

In the past, the National Assembly has refused many proposals for introduction of adequate, somewhat stronger constitutional, legislative powers of the National Council or even powers that would be contained in the Rules of Procedure of the National Assembly (for example on the field of EU affairs, reconsideration of an act procedure). Instead, the proposals of weakening and reducing the powers of the National Council, which were not only few in the twenty five years of its existence, were mainly passed. As the role of upper chambers is stronger in practice, where it does not oppose the lower chamber and the government, but rather cooperates with them, it would be appropriate for the National Council to gain strong, even equal jurisdiction with the National Assembly on the field of EU affairs. The National Council could complement

.....
 152 Grad, F.; Ribičič, C., Štrus, D.: *Spremembe Poslovnika Državnega zbora glede ponovnega odločanja o zakonu na podlagi veta Državnega sveta*, Inštitut za ustavno pravo, Ljubljana, 2015, p. 2.

the National Assembly regarding the extraordinary quantity of acts and documents in this field, and relieve it of some work that is now all done by the lower chamber.

The role of the National Council in the future is heavily dependent on the execution of the constitutional revision considering regions.¹⁵³ After the regions come into existence, there will be the possibility of changing the role of the National Council, as it could become their representative and would as such gain important powers in the legislative procedure as a protector of regional interests.

It has to be stressed that the changes should not be introduced in a hurry. At first, a wide discussion should be opened and the best solutions of bicameralism, appropriate for Slovenian legal order, should be researched. In practice, most proposals for the constitutional changes and for the changes of legislation originate from the government (in Slovenia and abroad). However, the Government is usually the one that does not want changes to happen, as it could mean a reduction of its influence in the upper chamber, which is especially distinct from Spanish, Irish and Canadian bicameralism, or the rise of effectiveness of the upper chamber – the National Council.

Unfortunately, the idea of contribution of bicameralism to democratization and better execution of the checks and balances system is not fully accepted in Slovenia, although it is already acknowledged by theory and practice in modern developed states. The upper chamber ensures a better quality legislation if it is of a different composition and with different instruments than the lower chamber. The concept of the National Council, aiding the National Assembly in passing better quality legislation is a

reasonable, suitable and internationally comparable idea that should evolve further in the light of an effective bicameral representative body.

There exists only a small possibility for the revision of the Constitution, changes of the legislation or the Rules of Procedure, that would lead to strengthening of the powers of the National Council. After twenty five years of existence it has to consider especially its advantages that are recognized by the public of experts, as by the general public. The National Council needs to keep a distance from daily politics and through the expertise of certain members support the quality of the discussions, which will enable a greater contact with the civil society. The National Council is the upper chamber of the parliament that is a unicum in the world, especially for its composition and its way of functioning. Combined with its role as a bridge between the civil society and politics, the National Council's experiences are highly appreciated by the other upper chambers in Europe and around the world, and a more active establishment of connections is desired.

The creators of the Slovenian Constitution had at its inauguration varying ideas about the role and the jurisdictions of the National Council, however, in the twenty five year period it has found its place in the Slovenian parliamentary system. Some of its powers were through the years abolished (the power to request a call for the referendum), but it has nonetheless regained an important role in practice, not only as a consequence of its powers in the legislative procedure, but also through other activities that are carried out by the National Council. In the future, the National Council will certainly tackle some of the actual and numerous new challenges, however, we are confident in its success, as long as it continues to strive towards expertise, and not towards politicizing discussions and strengthening connections with the civil society.

153 Constitutional revision regarding the regulation of regions has been passed in 2006 by the National Assembly. The regions will be constituted with a special act, which hasn't been yet passed by the National Assembly.

19. VIRI

19.1. Literatura

- Bučar, F.: Preoblikovanje slovenskega državnega zbora. Ljubljana, 1991, Teorija in praksa (št. 5–6).
- Cerar, M.: Status državnega sveta, Pravna praksa, št. 279/93, Gospodarski vestnik, Ljubljana, 1993, str. 5.
- Grad, F.: Parlamentarno pravo, Ljubljana, 2013, GV Založba.
- Grad, F., Kaučič, I., Ribičič, C., Kristan, I.: Državna ureditev Slovenije, Uradni list Republike Slovenije, Tretja spremenjena in dopolnjena izdaja, Ljubljana, 1999.
- Grad, F., Kaučič, I.: Ustavna ureditev Slovenije, Gospodarski vestnik, Druga dopolnjena in spremenjena izdaja, Ljubljana, 2001, str. 179–249.
- Grad, F., Kaučič, I.: Ustavno pravo Slovenije, Ministrstvo za notranje zadeve, Visoka policijsko-varnostna šola, Ljubljana, 1997.
- Grad, F., Kaučič, I.: Ustavno pravo Slovenije, Visoka policijsko-varnostna šola, Ljubljana, 1996.
- Grad, F.: Dvodomnost in zastopanost regionalnih interesov, v zborniku: Regionalizem v Sloveniji, ČZ Uradni list RS, Ljubljana, 1998.
- Grad, F.: Nekateri vidiki položaja drugega doma predstavniškega telesa, v: Zbornik znanstvenih razprav, LI. letnik, Ljubljana, 1991.
- Grad, F.: Nova razmerja med parlamentom in vlado, v: Podjetje in delo 6-7/2003, Gospodarski vestnik, Ljubljana, 2003.
- Grad, F.: Oblikovanje drugega doma predstavniškega telesa, Teorija in Praksa, letnik XXVIII, št. 5–6, Fakulteta za sociologijo, politične vede in novinarstvo Univerze v Ljubljani, Ljubljana, 1991.
- Grad, F.: Parlament in vlada, Uradni list Republike Slovenije, Ljubljana, 2000, str. 251–278.
- Grad, F.: Prilagoditev državnega zbora evropskim integracijskim procesom, v: Končno poročilo o rezultatih opravljenega raziskovalnega dela na projektu v okviru CRP „Konkurenčnost Slovenije 2001–2006“, Ljubljana, 2002.
- Grad, F.: Ustava, konstitucionalizem in demokracija, v: Podjetje in delo 6-7/2004/XXX, Gospodarski vestnik, 2004.
- Grad, F.: Vloga državnega sveta v zadevah Evropske unije, v: Vmesno poročilo o rezultatih opravljenega raziskovalnega dela na projektu v okviru CRP „Konkurenčnost Slovenije 2001–2006“ za obdobje od 1. 5. do 30. 10. 2003, naslov projekta: Proučitev institucije Državnega sveta RS in izbranih drugih domov sveta.
- Grad, F.; Ribičič, C., Štrus, D.: Ponovno odločanje o zakonu na podlagi veta Državnega sveta, ustavnopravno mnenje, Inštitut za ustavno pravo, Ljubljana, 2013.
- Grad, F.; Ribičič, C., Štrus, D.: Spremembe Poslovnika Državnega zbora glede ponovnega odločanja o zakonu na podlagi veta Državnega sveta, Inštitut za ustavno pravo, Ljubljana, 2015.
- Grad, F.; Ribičič, C., Štrus, D.: Nekatere dileme v zvezi s spremembami Poslovnika Državnega sveta glede ponovnega odločanja o zakonu, Inštitut za ustavno pravo, Ljubljana, 2016.
- Grad, F.; Ribičič, C., Štrus, D.: Spremembe in dopolnitve Poslovnika Državnega sveta v zvezi z vetom Državnega sveta ter spremembe in dopolnitve Poslovnika Državnega zbora v zvezi s postopkom ponovnega odločanja, Inštitut za ustavno pravo, Ljubljana, 2017.
- Igličar, A.: Vpliv političnih aktov in Poslovnika Državnega zbora na zakonodajo. V: Revija Pravnik (letnik 62, št. 9–10), Ljubljana, 2007, Uradni list RS.
- Igličar, A.: Slovenski parlament kot zakonodajalec. Ljubljana, 1991, Teorija in praksa (št. 3–4).
- Igličar, A.: Novi poslovniški model zakonodajnega postopka, Pravna praksa, št. 42/2002, Ljubljana, 2002.
- Jovičič, M.: Veliki ustavni sistemi, Beograd, 1984.

- Kaučič, I.: Teritorialno predstavnštvo v novem slovenskem parlamentu, Ljubljana, 1991, Teorija in praksa, (št. 5–6)
- Kocjančič, R.: Vloga nosilcev izvršilne oblasti in parlamentov držav članic v Evropski uniji, v: Uprava, letnik I, št. 1, Fakulteta za upravo Univerze v Ljubljani, Ljubljana, 2003.
- Kristan, I.: Dvodomnost in zastopanost regionalnih interesov. V: Regionalizem v Sloveniji, Ljubljana, 1998, ČZ Uradni list RS.
- Kristan, I.: Državni svet ali zbor regij?, v zborniku: Regionalizem v Sloveniji, ČZ Uradni list RS, Ljubljana, 1998.
- Kristan, I.: Državni svet in dvodomnost parlamenta, v zborniku razprav: 2. strokovno srečanje pravnikov s področja javnega prava, Inštitut za javno upravo, Izobraževanje in usposabljanje v javni upravi, Rogaška Slatina, 26. in 27. november 1996, str. 63–77.
- Kristan, I.: Dvodomnost slovenskega parlamenta, Pravnik, letnik 51, št. 9–10, Ljubljana, 1996.
- Kristan, I.: Dvodomnost slovenskega parlamenta, v zborniku referatov: Slovenski parlament – izkušnje in perspektive, ured. Brezovšek M., Slovensko politološko društvo, Ljubljana, 1996.
- Kristan, I.: Federalizem in Evropska unija, v: Slovensko pravo in gospodarstvo ob vstopu Slovenije v Evropsko unijo, Pravna fakulteta Univerze v Ljubljani, Portorož 21. – 23. april 2004.
- Kristan, I.: Od federacije do (kon)federacije?, v: Podjetje in delo 6-7/2004/XXX, Gospodarski vestnik, 2004.
- Kristan, I.: Odložni veto Državnega sveta, v: Zbornik referatov s III. strokovnega srečanja pravnikov javnega prava, Inštitut za javno upravo, Portorož, 3. – 5. decembra 1997, str. 107–118.
- Lukšič, I.: Korporatini Državni svet, V: Sodobna država : kaj mora in kaj zmore, Fakulteta za družbene vede : Društvo Občanski forum, 2003, str. 135–143.
- Norton, P. (urednik): National Parliaments and the European Union, Frank Cass, London, 1995.
- Norton, P.: Does Parliament Matter?, Harvester Wheatsheaf, New York, 1993.
- Norton, P.: Parliament in British Politics, Contemporary Political Studies, Palgrave Macmillan, New York, 2005, str. 83 in 89.
- Parliament of the Czech Republic Senate: A different composition of the Chambers in the bicameral system as a precondition for its efficiency?, 5th Meeting of the Association of European Senates, Prague, 6-7 October 2003, Collection of documents, str. 105.
- Ribičič, C.: Dvodomnost in učinkovitost parlamenta, Pravna praksa, št. 31/02 z dne 5. 9. 2002, Ljubljana.
- Ribičič, C.: Dvodomnost, v: VII. dnevi javnega prava, Portorož, 2001.
- Ribičič, C.: Podoba parlamentarnega desetletja, Samozaložba, Ljubljana, 2000.
- Ribičič, C.: Spremeniti način spreminjanja ustave?, Pravna praksa, št. 7/2002, Ljubljana, 2002.
- Ribičič, C.: Enodomen parlament ni učinkovit, v: Mozaik ustavnih sprememb, GV Založba, Ljubljana, 2003.
- Russell, M.: Reforming the House of Lords, Lessons from Overseas, Oxford University Press, New York, 2000.
- Second Chambers, Baldwin, N. D. J. in Shell, D. (ur.), The Journal of Legislative Studies, Volume 7, Number 1, London, 2001.
- Shell, D.: The History of Bicameralism, Second Chambers, Baldwin, N. D. J. in Shell, D. (ur.), The Journal of Legislative Studies, Volume 7, Number 1, London, 2001.
- Štrus, D., Zagorc, S.: Ohlapna in nedosledna ureditev volitev v državni svet, Zbornik znanstvenih razprav. - ISSN, 1854-3839. - Letn. 70 (2010), str. 285–314.
- Štrus, D.: Četrta faza zakonodajnega postopka, Javna uprava, letnik 45, št. 4, ISSN: 1318-2277, Ljubljana 2009, str. 41–65.
- Štrus, D.: Drugi domovi evropskih držav, Avstralije in Združenih držav Amerike, Državni svet republike

- Slovenije, Drofenik, M. (mentor), Ljubljana, 1999, 143. str.
- Štrus, D.: Odložilni veto Državnega sveta Republike Slovenije, *Pravnik*, Ljubljana, let. 57 (2002), 4-5, str. 293–315.
 - Štrus, D.: Predstavitev mnenj slovenskih ustavnih teoretikov o položaju Državnega sveta Republike Slovenije, *Pamfil*, Ljubljana, 2002, str. 44.
 - Štrus, D.: Zakonodajne pristojnosti drugega doma parlamenta, *Pravnik*. - ISSN 0032-6976. - Letn. 65, št. 5/6 (2010), str. 265–300.
 - Trstenjak, V.: O nekaterih vprašanjih ob konstituiranju Državnega zbora in Državnega sveta Republike Slovenije, *Pravnik*, št. 1-3, *Uradni list Republike Slovenije*, Ljubljana, 1993, str. 65–77.
 - Zakon o Državnem svetu, *Uradni list RS*, št. 100/05 – UPB, 95/09 – odl. US in 21/13 – ZFDO-F.
 - Zakon o funkcionarjih v Državnih organih (*Uradni list RS*, št. 30/90, 2/91-I, 18/91, 22/91, 4/93, 18/94 – ZRPJZ, 109/12 in 21/13).
 - Zakon o referendumu in o ljudski iniciativi, *Uradni list RS*, št. 26/07 – ZRLI-UPB2, 47/13 - UZ90,97,99.
 - Zakon o določitvi volilnih enot za volitve predstavnikov lokalnih interesov v državni svet, *Uradni list RS*, št. 48/92.
 - Zakona o lokalnih volitvah, *Uradni list RS*, št. 94/07 – uradno prečiščeno besedilo, 45/08 in 83/12.
 - Zakon o ustavnem sodišču, *Uradni list RS*, št. 15/1994, 64/2001.

19.2. Pravna ureditev

- Predlog za začetek postopka za spremembe Ustave Republike Slovenije z osnutkom Ustavnega zakona, EPA: 267 – VI, UZ90,91,93,96–101.
- Ustava Republike Slovenije, št. 33/91I, 42/97 - UZS68, 66/00 - UZ80, 24/03 - UZ3a, 47, 68, 69/04 - UZ50, 69/04 - UZ43, 69/04 - UZ14, 68/06 - UZ121,140,143, 47/13 - UZ90,97,99, 47/13 - UZ148, 75/16 - UZ70a.

19.3. Odločbe

- Odločba US, št. U-I-332/05, *Uradni list RS*, št. 94/07.
- Odločba US, št. U-I-84/96, *Uradni list RS*, št. 95/99.
- Odločba US, št. U-I-248/08-15, *Uradni list RS*, št. 95/09.
- Odločba US, U-I-104/01 z dne 14. 6. 2001, *Uradni list RS*, št. 45/2001 in št. 52/2001.

DRŽAVNI SVETNICE IN SVETNIKI 1992 – 2017

MEMBERS OF THE NATIONAL COUNCIL 1992 – 2017

.....

Državni svetnice in svetniki v I. mandatu / **Members of the National Council in I. term** (1992 - 1997)

1. Franc Ban
2. Ivo Benkovič
3. Polde Bibič
4. Danijel Božič
5. Branko Brumen
6. Miroslav Cerar
7. Peter Čeferin
8. Sandi Česko
9. Peter Glavič
10. Franc Glinšek
11. Franc Grašič
12. Tone Hrovat
13. Zoltan Jan
14. Fedja Klavora
15. Danilo Kovačič
16. Ivan Kristan - predsednik Državnega sveta /
President of the National Council
17. Jože Magdič
18. Avgust Majerič
19. Branko Matkovič
20. Gregor Miklič
21. Dušan Milenkovič

22. Dragan Mozetič
23. Aleš Ocepek
24. Dušan Plut
25. Jože Resman
26. Evgen Sapač
27. Miroslav Steržaj
28. Janko Sušnik
29. Erih Šerbec
30. Majda Šlajmer - Japelj
31. Marcel Štefančič
32. Dagmar Šuster
33. Boris Šuštaršič
34. Miha Tišler
35. Vladimir Tkalec
36. Simon Toplak
37. France Vodopivec
38. Albert Vodovnik
39. Franc Zavodnik
40. Jože Zupančič

Sekretarka Državnega sveta / **Secretary of the National Council** : Marija Drogenik

Državni svetnice in svetniki v II. mandatu / Members of the National Council in II. term (1997 - 2002)

1. Franc Batagelj
2. Polde Bibič
3. Igor Blažina
4. Jožko Čuk
5. Branko Grims
6. Tone Hrovat - predsednik Državnega sveta /
President of the National Council
7. Jože Ilc
8. Zoltan Jan
9. Vincenc Janša
10. Karlo Kastelic
11. Alojzij Kaučič
12. Darko Kavre
13. Petra Kersnič
14. Bojan Korošec
15. Vladimir Korun
16. Vekoslava Krašovec
17. Božo Kuharič
18. Jurij Kuštrin
19. Branko Lukšič
20. Avgust Majerič
21. Branko Matkovič

22. Borut Meh
23. Darja Odar
24. Alojz Oset
25. Katarina Ovca Smrkolj
26. Janez Oven
27. Milan Ozimič
28. Bojan Petan
29. Janez Praper
30. Dušan Rebolj
31. Jože Resman
32. Cvetana Rijavec
33. Veljko Rus
34. Dušan Semolič
35. Alojz Suhadolc
36. Boris Šuštaršič
37. Franc Vodopivec
38. Albert Vodovnik
39. Peter Vrisk
40. Milan Zver

Sekretarka Državnega sveta / Secretary of the National Council: Marija Drofenik

Državni svetnice in svetniki v III. mandatu / **Members of the National Council in III. term** (2002 - 2007)

- | | |
|--------------------------------|---|
| 1. Drago Bahun | 24. Branko Majes |
| 2. Miran Bavčar ¹ | 25. Marjan Maučec |
| 3. Stojan Binder | 26. Jože Mencinger |
| 4. Boris Janez Bregant | 27. David Nabergoj |
| 5. Ivan Bukovec | 28. Vincenc Otoničar |
| 6. Robert Čeh | 29. Milan Ozimič |
| 7. Jožko Čuk | 30. Marija Perkovič |
| 8. Darko Fras | 31. Anton Peršak |
| 9. Janvit Golob | 32. Anton Rozman |
| 10. Doro Hvalica | 33. Dušan Semolič |
| 11. Jože Ilc | 34. Jože Stanič |
| 12. Zoltan Jan | 35. Janez Sušnik - predsednik Državnega sveta / |
| 13. Vincenc Janša | President of the National Council |
| 14. Zlatko Jenko | 36. Štefan Teraž |
| 15. Jožef Jeraj | 37. Marta Turk |
| 16. Marko Juvančič | 38. Gregor Vovk Petrovski |
| 17. Ladislav Kaluža | 39. Peter Vrisk |
| 18. Anton Kampuš | 40. Adolf Zupan |
| 19. Jurij Kavčič | 41. Cvetko Zupančič |
| 20. Petra Kersnič | |
| 21. Branko Kodrič ² | Sekretar Državnega sveta / Secretary of the National |
| 22. Alojz Križman | Council: Primož Hainz |
| 23. Rado Krpač | |

¹ nadomestil Branka Kodriča / **replaced Branko Kodrič**

² umrl v času mandata / **passed away during the term**

Državni svetnice in svetniki v IV. mandatu / Members of the National Council in IV. term (2007 - 2012)

1. Matej Arčon
2. Drago Bahun
3. Stojan Binder
4. Rudolf Cipot
5. Dušan Črnigoj
6. Toni Dragar
7. Rajko Fajt
8. Darko Fras
9. Janvit Golob
10. Zoltan Jan
11. Mihael Jenčič
12. Lidija Jerkič
13. Blaž Kavčič - predsednik Državnega sveta /
[President of the National Council](#)
14. Bojan Kekec
15. Marijan Klemenc
16. Jože Korže
17. Alojz Kovšca
18. Jernej Lampret
19. Branko Majes
20. Borut Meh
21. Jože Mencinger

22. Jože Mihelčič
23. Vincenc Otoničar
24. Milan Ozimič
25. Milan Papič
26. Anton Peršak
27. Boris Popovič
28. Peter Požun
29. Rastislav Jože Reven
30. Andrej Rus
31. Dušan Semolič
32. Jože Slivšek
33. Drago Ščernjavič
34. Branimir Štrukelj
35. Boris Šuštaršič
36. Jernej Verbič
37. Bogomir Vnučec
38. Peter Vrisk
39. Cvetko Zupančič
40. Drago Žura

Sekretar Državnega sveta / [Secretary of the National Council](#): Marjan Maučec

Državni svetnice in svetniki v V. mandatu / **Members of the National Council in V. term** (2012 - 2017)

- | | |
|---|---|
| 1. Igor Antauer, | 23. Milan Medved ⁶ |
| 2. Mitja Bervar, - predsednik Državnega sveta /
President of the National Council | 24. Milan Ozimič, |
| 3. Stojan Binder, | 25. Radovan Stanislav Pejovnik, |
| 4. Zoran Božič, | 26. Miloš Pohole, |
| 5. Uroš Brežan, | 27. Boris Popovič, |
| 6. Toni Dragar, | 28. Bojana Potočan, |
| 7. Rajko Fajt, | 29. Jože Požeznik, |
| 8. Alojz Glavač, | 30. Peter Požun, |
| 9. Franc Golob, | 31. Metod Ropret, |
| 10. Janvit Golob, | 32. Dušan Semolič, |
| 11. Tomaž Horvat, | 33. Jože Slivšek, |
| 12. Franc Kangler ³ | 34. Dušan Strnad, |
| 13. Bojan Kekec, | 35. Stevo Ščavničar, |
| 14. Samer Khalil, | 36. Drago Ščernjavič, |
| 15. Oskar Komac, | 37. Branimir Štrukelj, |
| 16. Bojan Kontič ⁴ | 38. Branko Šumenjak, |
| 17. Alojz Kovšca, | 39. Matjaž Švagan, |
| 18. Mirko Kozelj, | 40. Jernej Verbič, |
| 19. Darija Kuzmanič Korva, | 41. Peter Vrisk, |
| 20. Marija Lah, | 42. Cvetko Zupančič, |
| 21. Milan Lukić, | Sekretar Državnega sveta: Marjan Maučec |
| 22. Rudi Matjašič ⁵ | Secretary of the National Council: |

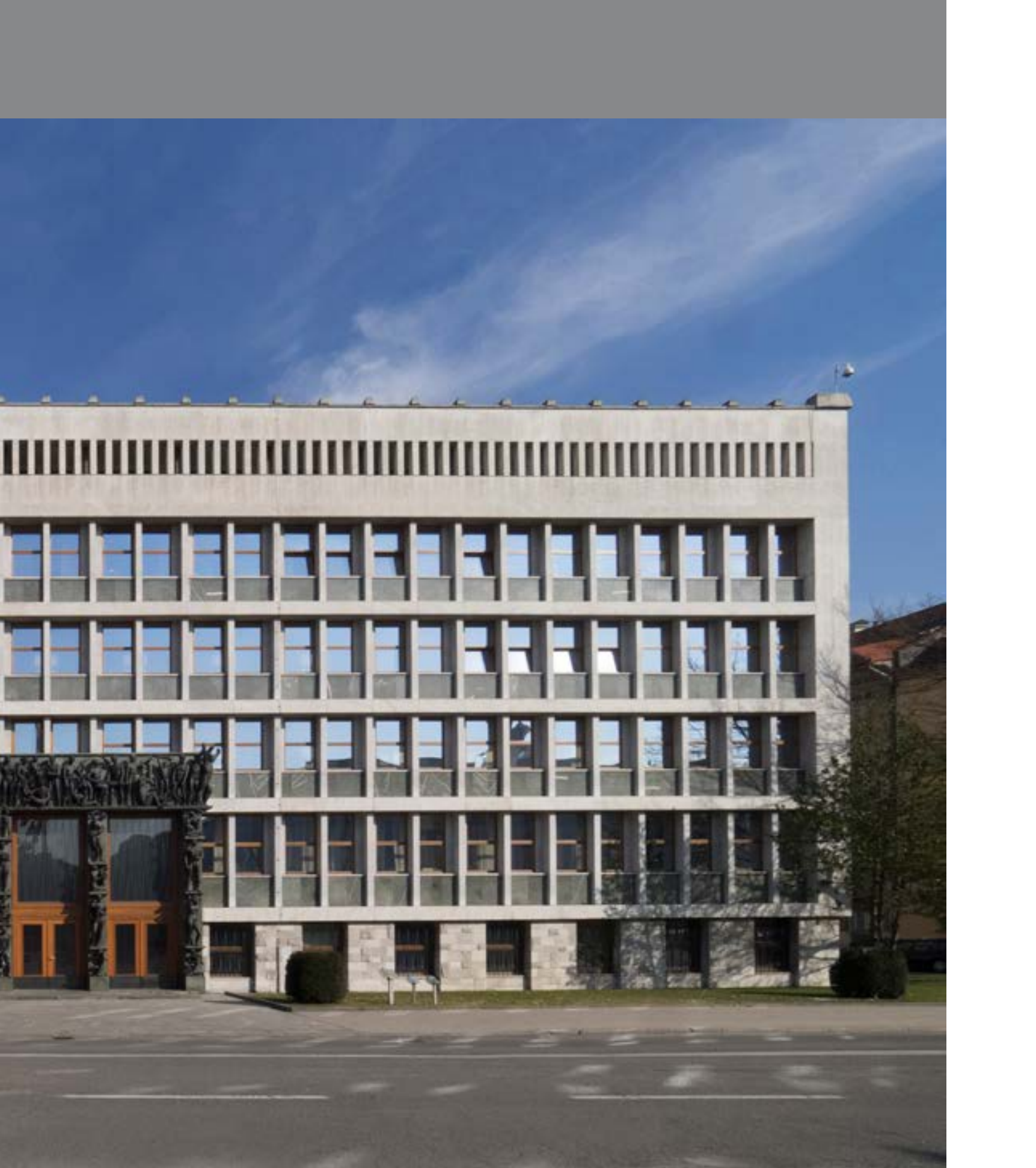
3 prenehanje mandata zaradi kazenske obsodbe / **cessation of the mandate because of the penal verdict**

4 nadomestil Milana Medveda / **replaced Milan Medved**

5 nadomestil Franca Kanglerja / **replaced Franc Kangler**

6 odstopil / **resigned as a member of a NC**







DRŽAVNI SVET –
ŽE 25 LET STIČIŠČE DRUŽBE

THE NATIONAL COUNCIL -
INTERCONNECTING SOCIETY FOR 25 YEARS

Izdal in založil / Published by: *Državni svet Republike Slovenije, Šubičeva 4, 1000 Ljubljana*

Avtor strokovnega dela / Author of the central article: *dr. Dušan Štrus*

Recenzenta strokovnega dela / Central article reviewers: *prof. dr. Bojan Dobovšek, prof. dr. Franc Grad*

Uredniški odbor / Editors: *Robert Celestina, Mitja Bervar mag. manag., mag. Marjeta Tratnik Volasko, dr. Dušan Štrus*

Oblikovanje in prelom / Design and layout: *Klemen Kunaver*

Tisk / Printed by: *Art 32, d.o.o., Ljubljana*

Naklada / Print run: *100 izvodov / copies*

Maj / May 2017

Arhivsko gradivo so prispevali / Archive materials provided by:

Narodna in univerzitetna knjižnica Ljubljana,

Zgodovinski arhiv Ljubljana,

Zgodovinski arhiv Univerze v Ljubljani

Za arhivske fotografije načrtov arhitekta Jožeta Plečnika se zahvalujemo Muzeju in galerijam mesta Ljubljane, Plečnikovi zbirki.

Archive photography's of the works of the architect Jože Plečnik by Plečnikova zbirka, Dokumentacija MGML

CIP - Kataložni zapis o publikaciji
Narodna in univerzitetna knjižnica, Ljubljana

342.531(497.4)

SLOVENIJA. Državni svet

Državni svet - že 25 let stičišče interesov družbe = The National Council - interconnecting society for 25 years / [uredniški odbor Robert Celestina ... et al.]. - Ljubljana : Državni svet Republike Slovenije, 2017

ISBN 978-961-6453-54-7

1. Celestina, Robert

290346752